

No. 10747

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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ORVEY RAY TURNBEAUGH and DEVEINE  
FLOY TURNBEAUGH,

Appellants,

vs.

MARY A. SANTOS,

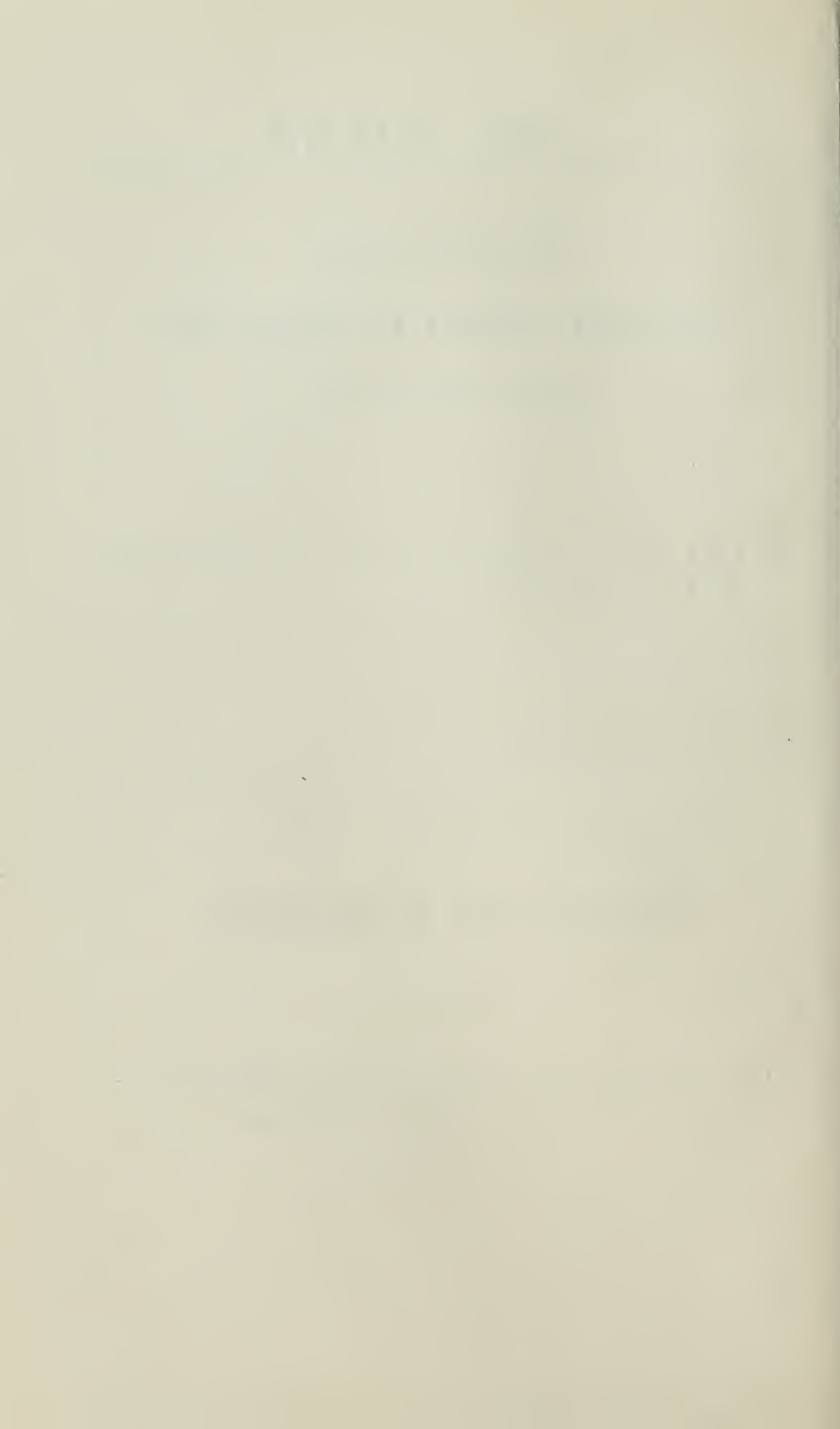
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Northern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## ATTORNEYS OF RECORD

Attorney for Appellants:

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San Francisco, Calif.

Attorneys for Appellee:

GUMPERT & MAZZERA

Stockton, Calif.

District Court of the United States  
For the Northern District of California  
Northern Division

No. 10150 in Bankruptcy

In the Matter of

ORVEY RAY TURNBEAUGH,

Bankrupt.

ORDER OF ADJUDICATION AND  
REFERENCE, ETC.

At Sacramento, in said District, on the 8th day of August, 1942.

The Petition of Orvey Ray Turnbeaugh filed on the 7th day of August, 1942, that Orvey Ray Turnbeaugh be adjudged a bankrupt under the Act of Congress relating to Bankruptcy, having been heard and duly considered; and no opposition being made thereto

It Is Adjudged that the said Orvey Ray Turnbeaugh is a bankrupt under the Act of Congress relating to Bankruptcy.

It Is Ordered that the above-entitled proceeding be, and it hereby is referred to Stephen N. Blewett, one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required and permitted by said Act, and that the said Orvey Ray Turnbeaugh shall henceforth attend before the said Referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

It Is Further Ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in the Ripon "Record", a newspaper published in the County of San Joaquin, State of California, within the territorial district of this Court, and in the County within which said bankrupt resides.

Dated August 8, 1942.

A. F. ST. SURE,  
District Judge.

[Endorsed]: Filed August 8, 1942. Walter B. Maling, Clerk. [1\*]

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District Court of the United States  
For the Northern District of California  
Northern Division

No. 10151 in Bankruptcy

In the Matter of

DEVEINE FLOY TURNBEAUGH,  
Bankrupt.

ORDER OF ADJUDICATION AND  
REFERENCE, ETC.

At Sacramento, in said District, on the 8th day of August, 1942.

The Petition of Deveine Floy Turnbeaugh filed on

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

the 7th day of August, 1942, that Deveine Floy Turnbeaugh be adjudged a bankrupt under the Act of Congress relating to Bankruptcy, having been heard and duly considered; and no opposition being made thereto

It Is Adjudged that the said Deveine Floy Turnbeaugh is a bankrupt under the Act of Congress relating to Bankruptcy.

It Is Ordered that the above-entitled proceeding be, and it hereby is referred to Stephen N. Blewett, one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required and permitted by said Act, and that the said Deveine Floy Turnbeaugh shall henceforth attend before the said Referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

It Is Further Ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in the Ripon "Record", a newspaper published in the County of San Joaquin, State of California, within the territorial district of this Court, and in the County within which said bankrupt resides.

Dated August 8, 1942.

A. F. ST. SURE,

District Judge.

[Endorsed]: Filed Aug. 8, 1942. Walter B. Maling, Clerk. [2]

In the District Court of the United States, in and  
for the Northern District of California, North-  
ern Division.

No. 10151

In Bankruptcy

In the Matter of

DEVEINE FLOY TURNBEAUGH,

Bankrupt.

WRITTEN OBJECTION TO TRUSTEE'S RE-  
PORT OF EXEMPT PROPERTY AND RE-  
QUEST FOR HEARING

To Hon. Stephen N. Blewett, Referee in Bank-  
ruptcy and to Orvey Ray Turnbeaugh, *Orvey*  
*Ray* Turneabugh, and John J. O'Reilley, Es-  
quire, Their Attorney:

You, and each of you, will please take notice that Mary A. Santos hereby files her written objection to the Trustee's Report of Exempt Property herein on the ground that the real property therein set forth is not exempt from execution under the laws of the State of California because that while a Declaration of Homestead was recorded, at the time of such recordation of Homestead, neither Deveine Floy Turnbeaugh or Orvey Ray Turnbeaugh, or either of them, was actually residing upon the real property therein described or described in said Trustee's Report.

Wherefore, said Mary A. Santos respectfully requests a hearing before the Referee herein to deter-



mine whether said real property described in said Trustee's Report is exempt as a homestead, and the Referee is hereby requested to fix a time and place for said hearing convenient for the Court, counsel for the Bankrupt, and counsel for said Mary A. Santos.

Dated October 17, 1942.

GUMPERT & MAZZERA,

Attorneys for said Mary A.  
Santos. [3]

State of California,

County of San Joaquin—ss.

J. Calvert Snyder, being first duly sworn, deposes and says:

That he is an attorney at law associated with the law firm of Gumpert & Mazzera, attorneys for Mary A. Santos in the above-entitled matter; that as such attorney, he is familiar with the facts involved in the above matter, and that all of such facts are within his own knowledge; that he has read the foregoing Written Objection to Trustee's Report of Exempt Property and Request for Hearing and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief and as to those matters, he believes it to be true.

J. CALVERT SNYDER



Subscribed and sworn to before me this 17th day of October, 1942.

[Seal] E. A. SANGUINETTI,  
Notary Public in and for the County of San Joaquin, State of California.

[Endorsed]: Filed Oct. 19, 1942. Stephen N. Blewett, Referee in Bankruptcy. [4]

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In the District Court of the United States, in and for the Northern District of California, Northern Division.

No. 10150 In Bankruptcy.

In the matter of

ORVEY RAY TURNBEAUGH,

Bankrupt.

TRUSTEE'S REPORT OF EXEMPT  
PROPERTY

To the Honorable Stephen N. Blewett, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above entitled proceeding.

Description	Estimated Value
All that real property in the County of San Joaquin, State of California, described as follows, to wit:	

A portion of the East 30 acres of the Southeast Quarter of the Southwest Quarter of Section 20, Township 2 South, Range 8 East, Mount Diablo Base and Meridian, and more particularly described as follows, to wit:

Commencing at the Southeast corner of the Southwest Quarter of said Section 20; thence North  $89^{\circ} 13\frac{1}{2}'$  West 60 feet to the West bank of Irrigation Canal and the point of beginning of the herein described parcel of land; thence North  $89^{\circ} 13\frac{1}{2}'$  West, 174.9 feet to a point; thence North  $0^{\circ} 10\frac{1}{2}'$  East to the center of an irrigation ditch; thence along center of irrigation ditch south  $89^{\circ} 13\frac{1}{2}'$  East, 182.45 feet to the west bank of irrigation canal; thence South  $1^{\circ} 49'$  West along west bank of said canal 263.25 feet to the point of beginning, containing 1.08 acres \$5,000.00

Subject to irrigation ditch along the north line and county road along the south line thereto.

Acreage computed to include portion in road on South and irrigation ditch on north.

Description	Estimated Value
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The foregoing property is encumbered by a deed of trust in favor of the State Building & Loan Association of Stockton, California, the approximate amount of \$2,430.00. Declaration of Homestead was filed in the Office of the County Recorder of San Joaquin County on the 20th day of November, 1940, recorded in Book of Official Records, Vol. 719, page 16, San Joaquin County Records.

Necessary household furniture	100.00
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(Exempt under Sec. 690 C.C.P. (State of California))

Dated: Oct. 15, 1942

LLOYD W. BUCHENAU,  
Trustee.

[Endorsed]: Filed Oct. 15, 1942. Stephen N. Blewett, Referee in Bankruptcy. [5]

In the District Court of the United States, in and  
for the Northern District of California, North-  
ern Division

In Bankruptcy

No. 10150

In the Matter of

ORVEY RAY TURNBEAUGH,

Bankrupt.

And

In Bankruptcy

No. 10151

In the Matter of

DEVEINE FLOY TURNBEAUGH,

Bankrupt.

OPINION OF REFEREE UPON QUESTION  
OF EXCEPTION TO TRUSTEE'S RE-  
PORT OF EXEMPT PROPERTY

The above entitled matters were duly consolidated for the purpose of the hearing and determination of the claims of bankrupts to an homestead exemption.

Orvey Ray Turnbeaugh, a painter by occupation, and Deveine Floy Turnbeaugh, his wife, filed their petitions and schedules in bankruptcy herein on the 8th day of August, 1942 and were duly adjudicated, and the matters were referred to the undersigned Referee. In their schedules (B 5), the respective bankrupts claimed as exempt certain real property

and buildings [6] thereon, situated near Manteca, San Joaquin County, California of the stated value of \$5,000.00, under the California Homestead laws by reason of a Declaration of Homestead executed by Floy Turnbeaugh, his wife, on November 15th, 1940 and recorded on November 20, 1940 in Book of Official Records, Vol. 719, Page 16, San Joaquin County Records.

After due and regular proceedings, Lloyd W. Buchenau was appointed as Trustee of the respective matters and he duly qualified as such. On October 15, 1942 he filed his report of exempt property, allowing therein the real property claimed as a homestead.

On October 19, 1942 Mary A. Santos, a creditor, filed her exceptions to the report and requested a hearing thereon.

A hearing was duly set and regularly noticed for December 15, 1942 before the Referee at his Courtroom at Stockton, California. At said hearing, the objecting creditor was represented by Messrs. Gumpert & Mazzera, Esqs., and the Trustee by Nat Brown, Esq., and the bankrupts by John J. O'Reilly, Esq.

The sole question before the Court is one of fact.

Were the bankrupts actually residing upon the premises at the time of the declaration of the homestead, November 15, 1940?

The premises herein referred to are described as follows:

All that real property in the County of San



Joaquin, State of California, described as follows, to-wit:

A portion of the East 30 acres of the Southeast Quarter of the Southwest Quarter of Section 20, Township Two (2) South, Range Eight (8) East, Mount Diablo Base and Meridian, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of said Section Twenty (20); thence North  $89^{\circ} 13\frac{1}{2}'$  West 60 feet to the West bank of Irrigation Canal and the point of beginning of the herein described parcel of land; thence [7] North  $89^{\circ} 13\frac{1}{2}'$  West, 174.9 feet to a point; thence North  $0^{\circ} 10\frac{1}{2}'$  East to the center of an Irrigation Ditch; thence along center of Irrigation ditch South  $89^{\circ} 13\frac{1}{2}'$  East, 182.45 feet to the West bank of Irrigation Canal; thence South  $1^{\circ} 49'$  West along West bank of said canal 263.25 feet to the point of beginning, containing 1.08 acres.

Subject to Irrigation ditch along the North line and County Road along the South line thereof.

Acreage computed to include portion in road on South and Irrigation ditch on North.

The homestead is claimed under Division 2, Part 4, Title 5 of the Civil Code of the State of California.

At the time of the declaration of homestead, the premises consisted of land on which bankrupts had hastily erected an ordinary family car garage with

a large door at one end. There were no installations, such as water, lighting or sanitary facilities. At the same time, the bankrupts were renting a comfortably furnished house about a mile and a quarter away, where their family of four children lived and where the bankrupts cooked and ate their meals and did their washing and the entertaining of their friends.

The Court would like to reiterate certain observations concerning the law of homesteads made in a recent case before the undersigned involving a similar question:

“The statutes, relating to homestead, are of an humanitarian character and, of course, should be liberally construed to effect their purpose and in the spirit in which they were received. However, there are certain fundamental statutory requirements, which must exist to entitle the bankrupt to his homestead exemption. One of these, and the only one necessary for us to consider at this time, is the question of residence. It is generally conceded by counsel that this is one of strict [8] construction.

“In *Tromans v. Mahlman*, 92 Cal. 108, (27 Pac. 1094) the court said:

‘To effect its purpose, the statute has been liberally construed in some respects, but the requirement as to residence at the time the declaration is filed has been strictly construed. This the court has many times used and, emphasized the word “actually” to show that the

residence must be real and not sham or pretended' ”.

Lakas Archambault,

38 Cal. App. p. 371-2.

“Concerning such evidence of intention, this court said in *Tromans v. Mahlman*, 111 Cal. 648 (44 Pac. 327), ‘whether she (the appellant) did tute a valid homestead the claimant must actually reside on t he premises when the declarafact to be determined by the court from the evidence before it’ . . . .

“In the former appeal in that action *Tromans v. Mahlman*, 92 Cal. 1 (27 Pac. 1094; 28 Pac. 579) it was said:

‘It is settled law in this state that to constitute a valid homestead the claimant must actually reside on the premises when the declaration is filed (citing cases . . . The obvious purpose of the statute in providing for the selection of a homestead was to thereby make a home for the family, which neither of the spouses could encumber or dispose of without the consent of the other, and which should at all times be protected against creditors. To effect its purpose, the statute has been liberally construed in some respects, but the requirement as to residence at the time the declaration is filed has been strictly construed.’ The foregoing statement of the law was approved in *Bullis v. Stanford*, 178 Cal. 40 (171 Pac. 1064). (See, also, 13 Cal. Jur. 554, and cases cited.)’ ”

*Johnston v. DeBock*, 198 Cal. at page 1181.



“It is settled law in this state that to constitute a valid homestead the claimant must actually reside on the premises when the declaration is filed. (Prescott v. Prescott, 45 Cal. 58; Babcock v. Gibbs, 52 Cal. 629; Aucker v. McCoy, 56 Cal. 524; Pfister v. Dascey, 68 Cal. 572; Lubbock v. McMann, 82 Cal. 228, (16 Am. St. Rep. 108).) . . .

Bullis v. Stanford

178 Cal. at p. 45 [9]

Turnbeaugh, the bankrupt, testified that there were no buildings when he purchased the property; the first lumber was delivered October 31, 1940; the garage was built in less than two weeks; size 22x24. There were no water or sanitary facilities, when the homestead was declared. That on November 14th, furniture consisting of a bed and some other items were moved into the garage. They used a coal-oil lamp for lighting purposes; an oil heater for warmth; carried their drinking water in a gallon jar to the garage from a distance from November to February. That during all of this time and up to February 9, 1941, they were renting a home from a man named Gagas, situated about one mile and a quarter distant. Orvey Ray Turnbeaugh, the bankrupt; also claims that he and his wife slept at the garage during this time from November 14th on. He said that they ate breakfast and dinner at the Gagas place, which was comfortably furnished and serviced with running water, heating and sanitary facilities and electricity. Here, their two sons and

two minor daughters lived and slept until a house was built on the homestead property. Turnbeaugh said he ate his noon meal on the homestead property whenever he was working there. Most of the family foodstuffs were kept at the Gagas house.

The bankrupt's wife corroborated the bankrupt on most of the above related testimony. She said that her husband was principally engaged as a contracting painter during this period; also that all usual household activities, such as washing, bathing, cooking, etc. were carried on at the Gagas premises.

Other witnesses called were:

W. C. Alley of the Pacific Gas & Electric Company, who testified that the lighting meter was installed February, 1941.

Sam Van Dyken, who installed the pressure water system January 28, 1941 and hand pump January 21, 1941. [10]

One Baumgardner, who drilled the well December 27, 1940-January 1, 1941 said Turnbeaugh was not there when he moved on the job. He contacted bankrupt at the Gagas residence. That he saw no evidence of anyone sleeping there at the time. That Turnbeaugh was doing some carpenter work on homestead premises when he saw him there later.

Florence McGurk, a witness for bankrupt, a close friend, visited them at garage and saw a bedroom-set there. She said that she saw the "little girls" in bed there sick with the flu in the latter part of January, 1941. No one else

testified to the girls being there in bed sick with the flu.

It seems incredible that parents in the dead of winter (and a severe one at that) would keep their sick little children in an unheated garage, when they had a warm comfortable home available.

Mrs. Therman, a witness for bankrupts, was a neighbor who lived about a block and a half away. She naturally was interested in her new neighbors. She saw the garage go up during the latter part of November. She saw lights and a car in the garage. She watched them build their house later into which they moved in May, 1941.

Another witness for bankrupts was Clem M. Mulholland who had visited them at the Gagas house and the garage several times. He said that he went to the garage one night to call them to the telephone and found the place dark, but they were in the building. He fixed the time as a week before Thanksgiving, 1940.

While the evidence is vague and conflicting as to whether the bankrupts actually slept in the garage prior to and at the time of the declaration of the homestead, even assuming they "went through the motions of a residence", there was no bona-fide actual residence then. It was purely a gesture of attempted compliance with the statute and it was but of a sham and fictitious character. It lacked an honest, genuine present intent to actually reside thereon at the time of the declaration. A future in-

tent of residence is insufficient. Claimants could not have two places of residence at the same time. Their actual residence at the time of the homestead declaration was at the Gagas home, where they continued to reside up to February, 1941. Practically all of the activities of their home life were carried on at the Gagas home. There, their family lived; there, the two [11] little girls, who, of course, needed and received a mother's care and attention lived; there, the normal affairs of the family life occurred; the meals were served; the sewing was done; the washing, bathing, etc., (all necessary to a normal respectable and sane mode of living) took place. The claim of bankrupts is fantastic. Is it credible that throughout a cold dreary wet winter, with chilling winds and driving rains and frost, that claimants lived in a garage without any ordinary facilities of living when they had a warm, comfortable, well furnished home, with a family of young children, a mile and a quarter away? Can you imagine refined people like these dressing and undressing on a cold concrete floor in the dampness of winter nights; no water, hot or cold for bathing; no toilet, not even a privy on the place; no place to keep their clothes free from dust; no cooking facilities sufficient to make a cup of hot tea and these people beyond middle age?

The Court is convinced that the bankrupts did not actually reside on the premises herein involved on November 15, 1940, and that any semblance of residence thereon at the time of the declaration was not real, but sham and pretended and not bona-



fide and genuine. Inasmuch as the homestead statutes require actual residence at the time of the declaration of the homestead, it must follow that said Homestead is invalid and of no force and effect whatever, and that the report of the Trustee, setting apart the premises claimed as a homestead, must be overruled and that the exceptions to the report of the Trustee, as filed by the creditor, must be sustained.

It Is Therefore So Ordered.

Dated: April 15, 1943.

STEPHEN N. BLEWETT,

Referee in Bankruptcy.

[Endorsed]: Filed April 15, 1943. Stephen N. Blewett, Referee in Bankruptcy. [12]

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[Title of Court and Causes.]

### ORDER

In the above entitled matters (which were duly consolidated for the purpose of the hearing and determination of the claims of bankrupts to a home and exemption) it appears that said bankrupts, and each and both of them, claimed a homestead, under the homestead laws of the State of California, and said bankrupts claimed and sought to have set aside to them, as and for homestead purposes, the following described real property, situate in the County of San Joaquin, State of California, to-wit:

“A portion of the East 30 acres of the Southeast Quarter of the Southwest Quarter of Sec-

tion 20, Township 2 South, Range 8 East, Mount Diablo Base and Meridian, and more particularly described as follows, to-wit: [13] Commencing at the Southeast corner of the Southwest Quarter of said Section 20; thence North  $89^{\circ} 13\frac{1}{2}'$  West 60 feet to the West bank of Irrigation Canal and the point of beginning of the herein described parcel of land; thence North  $89^{\circ} 13\frac{1}{2}'$  West, 174.9 feet to a point; thence North  $0^{\circ} 10\frac{1}{2}'$  East to the center of an irrigation ditch; thence along center of irrigation ditch South  $89^{\circ} 13\frac{1}{2}'$  East, 182.45 feet to the west bank of Irrigation Canal; thence South  $1^{\circ} 49'$  West along west bank of said canal 263.25 feet to the point of beginning, containing 1.08 acres.

Subject to irrigation ditch along the north line and county road along the south line thereof.

Acreage computed to include portion in road on south and irrigation ditch on north."

And it appearing that thereafter Lloyd W. Buchenau, Esq., the duly appointed, qualified and acting Trustee in and of said bankrupts' estates made his report setting apart unto said bankrupts the foregoing described real property, pursuant to the claims of said bankrupts thereto, as a homestead.

And it appearing that thereafter and within the time provided by law therefor one of the unsecured creditors of said estate filed objections to said Trustee's Report of Exempt Property wherein said

Trustee sought to have withheld from the creditors of these bankrupt estates the said foregoing described real property; and that thereafter and within the time provided by law therefor, a hearing was had on said Trustee's Report of Exempt Property and on the Objections of the said creditor of said bankrupts to said Report and at said hearing witnesses were sworn and examined for said bankrupts and as well for said objecting creditor and said Trustee; and that thereafter written briefs on the part of said bankrupts and said objecting creditor and Trustee were duly and regularly filed herein;

After fully considering the respective positions of said bankrupts and of the said objecting creditor and Trustee, and the Court being fully advised in the premises, and good [14] cause therefor appearing, on motion of Gumpert & Mazzer, Esqs., attorneys for said objecting creditor, and Nat Brown, Esq., attorney for said Trustee, it is hereby

Ordered that said bankrupts, and neither of them, are entitled to said real property as and for a homestead, but that on the contrary said real property is not and never was a homestead, but rather an asset of said bankrupts which is to be sold in the due administration of this estate and the recoveries therefrom applied to the payment of the claims of the general creditors herein, and it is hereby further

Ordered that the said Trustee's Report of Exempt Property be amended accordingly.

Dated: April 21, 1943.

STEPHEN N. BLEWETT

Referee in Bankruptcy.

Attest: A True Copy.

STEPHEN N. BLEWETT,

Referee in Bankruptcy.

[Endorsed]: Filed April 21, 1943. Stephen N. Blewett, Referee in Bankruptcy. [15]

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[Title of Court and Causes.]

PETITION FOR REVIEW OF THE ORDER  
OF THE REFEREE

To Stephen N. Blewett, Esq., Referee in Bankruptcy:

Comes now your petitioners and respectfully show the following facts:

I.

That your petitioners are the above-named bankrupts.

II.

That on the 21st day of April, 1943, an order, a copy of which is hereto annexed, was made and entered herein, a copy of which order was sent through the United States Mail on the 23rd [16] day of April, 1943, to the bankrupts herein, in care of John J. O'Reilly, their attorney, ordering and holding that the claim of Homestead sought as



exempt property by the bankrupts herein, to be invalid and of no force and effect whatever, and that the report of the Trustee, setting apart the premises claimed as such homestead, must be overruled and the exceptions to the report of the Trustee, as filed by the creditor, must be sustained.

### III.

That such order was and is erroneous in holding that the bankrupts did not actually reside on the homesteaded premises November 15, 1940, in that, there was testimony absolute in character that the said bankrupts did reside on said premises beginning with the 14th day of November, 1940, thereby claiming it as and occupying same as their home, and continuing to do so uninterrupted to the date of filing their petitions herein in bankruptcy.

### IV.

That such order was and is erroneous in holding that bankrupts did not actually reside on said homesteaded premises on said date of November 15, 1940, in that, the question before the Referee was: Did the bankrupts actually reside on said premises on or prior to November 20, 1940, when said declaration of homestead was actually filed for record in the Office of the County Recorder of San Joaquin County, California, so far as the Statutes and decisions pertaining to homesteads are concerned: *Pfister vs. Dasey*, 68 Cal. 572-3. "actual residence before filing declaration is sufficient". 1263-1265 Civil Code of California.

## V.

That such order was and is erroneous in holding that: "The claim of bankrupts is fantastic", for the reason as it states, that certain members of the bankrupts family lived elsewhere and that the bankrupts ate their meals, (not all) elsewhere, other [17] than on said homesteaded premises. That, as a matter of law and particularly in view of the decision in *Skinner vs. Hall*, 69 Cal. 195-8: "One may actually reside in a house though his family be away and he take his meals elsewhere".

## VI.

That said order was and is erroneous in that it is contrary to the facts and evidence produced in behalf of the bankrupts at said hearing.

## VII.

That said order was and is erroneous in holding "the evidence vague and conflicting", when as a matter of fact there was testimony without conflict and uncontradicted, that bankrupts moved into their garage-home with their bed and bedding, and other household facilities on November 14, 1940, and continued to and did sleep in said premises continuously thereafter. As was said in *Taylor vs. Hargous*, 4 Cal. 268, "Occupancy by family is presumptive evidence of appropriation of a place as a homestead, and is consequently notice to all the world". And also in *Mahoney vs. Hefer*, 75 Cal. 422-4, "Use to which property is put, and not its quantity, furnishes test to determine whether it is subject to homestead".

VIII.

That such order was and is erroneous in that:

(a) That such order is not supported by the evidence:

(b) That the order pursuant thereto is contrary to law;

(c) That the Court erred in admitting testimony over the objections of the Bankrupts; and

(d) That such order was and is erroneous in that no testimony upon which to base said order or to establish facts sufficient in denying said bankrupts claim of exemption to said homesteaded premises. [18]

Wherefore, your petitioners, feeling aggrieved because of such order, prays that the same may be reviewed, as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated: April 23, 1943.

ORVEY RAY TURNBEAUGH  
DEVEINE FLOY TURNBEAUGH  
JOHN J. O'REILLY,

Attorney for Petitioners.

State of California,  
County of San Joaquin—ss.

Orvey Ray Turnbeaugh and Deveine Floy Turnbeaugh, each for himself being first duly sworn, deposes and says:

That they are the bankrupts and petitioners herein, and that they hereby solemnly swear that the statements of facts therein contained are true ac-

ording to the best of their knowledge, information and belief.

ORVEY RAY TURNBEAUGH  
DEVEINE FLOY TURNBEAUGH

Subscribed and sworn to before me this 23 day of April, 1943.

[Notary Seal] JOHN J. O'REILLY  
Notary Public in and for said County and State.

[Endorsed]: Filed Apr. 30, 1943, Stephen N. Blewett, Referee in Bankruptcy. [19]

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[Title of District Court and Causes.]

CERTIFICATE AND REPORT OF REFEREE  
ON PETITION TO REVIEW REFEREE'S  
ORDER

To the Honorable District Judge of the United States District Court Presiding at Sacramento—

I, Stephen N. Blewett, Referee in Bankruptcy of this Court to whom was referred the above entitled proceedings, respectfully certify and report:

That on October 15, 1942, the Trustee of the above entitled bankrupt estates (which were by Order consolidated and treated as one for the purposes of administration only) filed his Report of Exempt Property herein by which he, the said Trustee, set apart to be retained by the bankrupts as their own property under Section 1240 C.C. of the State of California, certain [20] real property

in the County of San Joaquin, State of California, specifically described as follows, to-wit:

“All that real property in the County of San Joaquin, State of California, described as follows, to wit:

A portion of the East 30 acres of the Southeast Quarter of the Southwest Quarter of Section 20, Township 2 South, Range 8 East, Mount Diablo Base and Meridian, and more particularly described as follows, to wit:

Commencing at the Southeast corner of the Southwest Quarter of said Section 20; thence North  $89^{\circ} 13\frac{1}{2}'$  West 60 feet to the West bank of Irrigation Canal and the point of beginning of the herein described parcel of land; thence North  $89^{\circ} 13\frac{1}{2}'$  West 174.9 feet to a point; thence North  $0^{\circ} 10\frac{1}{2}'$  East to the center of an irrigation ditch; thence along center of irrigation ditch south  $89^{\circ} 13\frac{1}{2}'$  East, 182.45 feet to the west bank of irrigation canal; thence South  $1^{\circ} 49'$  West along west bank of said canal 263.25 feet to the point of beginning, containing 1.08 acres.

Subject to irrigation ditch along the north line and county road along the south line thereto. Acreage computed to include portion in road on south and irrigation ditch on north.”

That said real property was claimed by the said bankrupts in their schedules in bankruptcy on file herein on Schedule B-5 in each case, which said claim, being made by virtue of a Declaration of



Homestead which was purported to have been recorded as specified in the said schedules of each bankrupt.

Thereafter, and within the time provided by law therefor, written Objections to the Trustee's said Report of Exempt Property were filed herein by one Mary A. Santos, a creditor having a substantial claim herein and said Objections were directed particularly to the Trustee's Report setting aside the said real property for and because of the matters and things in said Objections to Trustee's Report contained and which in particular claim that at the time of the recordation of said Declaration of Homestead, that neither of the above entitled bankrupts were actually residing upon the real property in said Declaration of Homestead or in said Trustee's Report of Exempt [21] Property described.

That the Trustee of the above entitled bankrupt estates objected to the setting apart unto said bankrupts of said real property for and upon the same grounds and for the same reasons as contained in the Objections, which were filed by the said creditor, Mary A. Santos.

Thereafter, and within the time provided by law, and in the due administration of said estates, a hearing was had before this Referee, at which hearing the said bankrupts and each of them personally testified, together with witnesses on behalf of the said bankrupts and witnesses for and on behalf of said objecting creditor, and the said Trustee. That all parties in interest during said hearing were

represented by counsel and at all times have been represented by counsel herein.

That after the conclusion of said hearing, and at the request of counsel for the respective parties in interest, written Briefs were filed for and on behalf of the said objecting creditor and Trustee, and for and on behalf of the said bankrupts.

That, thereafter, the matter in controversy was submitted for decision to your Referee and that your Referee, after reviewing the facts and pertinent law, made the following Order on April 21, 1943:

“Ordered: That said bankrupts and neither of them are entitled to said real property as and for a homestead, but that on the contrary said real property is not and never was a homestead but rather an asset of said bankrupts and is to be sold in the due administration of these estates and the recoveries therefrom applied to the payment of the claims of the general creditors herein, and it is hereby further Ordered that said Trustee’s Report of Exempt Property be amended accordingly”.

That, thereafter, the bankrupts filed with the Referee within the time provided by law their petition for a review of [22] the aforesaid Order of said Referee. The questions presented by the review are:

Was the order of the Referee supported by sufficient evidence?

Was the order in accordance with law?

The following is a brief synopsis of the testimony of the witnesses:

Orvey Ray Turnbeaugh, one of the bankrupts, testified that the property described in the declaration of homestead was purchased during the month of August, 1940, and that at the time of the purchase, there were no buildings upon the same; that the first lumber was delivered October 31, 1940; that the garage was built in less than two weeks having been constructed with lumber and a cement floor, size 22x24; that there were no water or sanitary facilities when the homestead was declared. That on the 14th day of November, 1940, the bankrupts, husband and wife, moved into the garage, and on the same date furniture consisting of a bed and some other items were moved into the garage. Bankrupts used a coaloil lamp for heating purposes and an oil heater for warmth. They carried their drinking water in a gallon jar to the garage from November to February. That the witness and his wife slept there on November 14, 1940 and continued to do so thereafter until a new home was constructed on said property in February, 1941. That during all of this time and up to February 6, 1941, they were renting a home from a man named Gagas situated about one mile and a quarter distant. That during the time they lived in the garage, they ate their lunch and had warm coffee when they were working in and around the premises. That witnesses' two minor daughters and two sons were living at the Gagas house during this time; that neither the witness nor his wife slept in the Gagas house from November 14, 1940, but they ate their breakfasts



and dinners there until the 9th day of February, 1941.

The Gagas house, which they were renting, was comfortably furnished and serviced with running water, heating and sanitary facilities and electricity; here their two sons and two minor daughters lived and slept until a house was built on the homestead property. Most of the family foodstuffs were kept at the Gagas house.

Deveine Floy Turnbeaugh, bankrupt and wife of the preceding witness testified substantially to the same facts as the husband. She stated that her husband was principally engaged as a contracting painter during this period and that all of the household activities, such as washing, bathing, cooking, etc. were carried on at the [23] Gagas premises; that some of their clothes were kept in each place.

W. C. Alley of the Pacific Gas & Electric Company, testified that the lighting meter was installed at the garage to supply lighting service and an electric range on February 1, 1941.

Sam Van Dyken testified that he installed a pressure system on the premises on the 28th day of January, 1941, and that the electrical wiring was installed January 21, 1941.

George Baumgardner testified that he drilled a well on said premises during the last days of December, 1940, and that Turnbeaugh was not there when he moved on the job. He had contacted him at the Gagas residence; that he saw no evidence of any one sleeping there at the time, but saw Turn-

beaugh doing some carpenter work there on a later occasion.

Florence McGurk, a close friend of the family, testified she visited the bankrupts on November 14, 1940 at the garage on the premises about 7:00 or 8:00 o'clock in the evening and that she observed a bed-room set there and that the bed was made. She further testified she saw the bankrupts' little girls sleeping there in the garage in the latter part of November, 1940, during the time when these children had the flu (no one else testified to the children sleeping there in the garage). This seems particularly incredible that the parents would keep sick children in an unheated garage when they had a warm, comfortable home about a mile and a quarter away.

Mrs. Clarice Therman testified that she was a neighbor, who lived about a block and a half away; that she saw the garage being built the latter part of November; that it was completed shortly after Armistice Day, 1940. That she saw lights there and and a car in the garage; that she visited at the garage home to collect for the Red Cross Roll call.

Clem M. Mulholland testified that she had visited the bankrupts at the Gagas house and the garage on several occasions; that she had gone to the garage quarters in question during the month of November, 1940, one week before Thanksgiving about 9:00 o'clock p.m. for the purpose of calling Mr. Turnbeaugh to come to answer a telephone call at her home; that she went to the garage quarters a number of times during the month of November, 1940.

That while visiting the Turnbeaugh's, she observed a bed, some sort of a rug on the floor, etc. [24]

Lyle Turnbeaugh testified that he was a son of the bankrupts and that his parents stayed at the garage every night from November 14th on; that he and his brother and two sisters stayed at the Gagas house until after the 1st of the year when they moved into the new house on the premises.

Discussion by Referee of the Facts and Citations  
In Support of His Findings

The evidence is vague and conflicting as to whether bankrupts actually slept in the garage prior to and at the time of the declaration of homestead. The Referee is convinced that there was no bona-fide actual residence on the premises in question. Assuming that the bankrupts "went through the motions of a residence", it could be no more than that of a token character; in other words, purely a gesture of attempt to comply with the statute, and it was of a sham and fictitious character. The evidence shows a lack of honest, genuine present intent to actually reside on the premises at the time of the declaration. The witnesses for the bankrupts could be very honestly mistaken as to the time when they saw the Turbeaugh's residing on the premises.

The testimony of the witness, who saw the children of the bankrupts lying in bed in the garage, sick with the flu, is absolutely incredible. It is a well-known fact that this was a cold, dreary, wet winter and these bankrupts had a warm, comfortable house with all facilities a mile and a quarter away from the garage.

The claim of bankrupts is fantastic. Is it credible that throughout a cold, dreary, wet winter, with chilling winds and driving rains and frost, that claimants lived in a garage without any ordinary facilities of living when they had a warm, comfortable, well-furnished home, with a family of young children, [25] a mile and a quarter away? Can one imagine refined people like these dressing and undressing on a cold concrete floor in the dampness of winter nights; no water, hot or cold for bathing; no toilet, not even a privy on the place; no place to keep their clothes free from dust; no cooking facilities sufficient to make a cup of hot tea and these people beyond middle age?

The Court is convinced that the bankrupts did not actually reside on the premises herein involved on November 15, 1940, and that any semblance of residence thereon, at the time of the declaration, was not real, but sham and pretended and not bona-fide and genuine. Inasmuch as the homestead statutes require actual residence at the time of the declaration of the homestead, it must follow that said homestead is invalid and of no force and effect whatever.

The law applicable to the facts of this case is contained in the following citations:

The statutes, relating to homestead, are of an humanitarian character and, of course, should be liberally construed to effect their purpose and in the spirit in which they were received. However, there are certain fundamental statutory requirements, which must exist to entitle the bankrupt to



his homestead exemption. One of these, and the only one necessary for us to consider at this time, is the question of residence. It is generally conceded by counsel that this is one of strict construction.

“In *Tromans v. Mahlman*, 92 Cal. 108, (27 Pac. 1094) the court said:

‘To effect its purpose, the statute has been liberally construed in some respects, but the requirement as to residence at the time the declaration is filed has been strictly construed. This the court has many times used and, emphasized the word “actually” to show that the residence must be real and not sham or pretended’.”

Lakas Archambault,

38 Cal. App. P. 371-2. [26]

“Concerning such evidence of intention, this court said in *Tromans v. Mahlman*, 111 Cal. 648 (44 Pac. 327), ‘whether she (the appellant) did in fact actually reside on the premises at the time the declaration was filed was a question of fact to be determined by the court from evidence before it’ . . .

“In the former appeal in that action *Tromans v. Mahlman*, 92 Cal. 1 (27 Pac. 1094; 28 Pac. 579) it was said: “It is settled law in this State that to constitute a valid homestead the claimant must actually reside on the premises when the declaration is filed (citing cases . . . The obvious purpose of the statute in providing for the selection of a homestead was to thereby



make a home for the family, which neither of the spouses could encumber or dispose of without the consent of the other, and which should at all times be protected against creditors. To effect its purpose, the statute has been liberally construed in some respects, but the requirement as to residence at the time the declaration is filed has been strictly construed. "The foregoing statement of the law was approved in *Bullis v. Stanford*, 178 Cal. 40 (171 Pac. 1064). (See also, 13 Cal. Jur. 554, and cases cited.)"

*Johnston v. DeBrock*,  
198 Cal. at Page 1181

"It is settled law in this state that to constitute a valid homestead the claimant must actually reside on the premises when the declaration is filed. (*Prescott v. Prescott*, 45 Cal. 58; *Babcock v. Gibbs*, 52 Cal. 629; *Aucker v. McCoy*, 56 Cal. 524; *Pfister v. Dascey*, 68 Cal. 572; *Lubbock v. McMann*, 82 Cal. 228, (16 Am. St. Rep. 108).

*Bullis v. Stanford*,  
178 Cal. at P. 45.

## FINDINGS OF FACT

The order, upon which review is sought to be had, is heretofore set forth in this certificate and the reasons for holding said homestead to be invalid are also set forth herein.

Papers Handed Up Herewith:

I hand up herewith the following papers:—

- 1) Opinion of Referee upon question of exception to Trustee's Report of Exempt Property;
- 2) Order declaring homestead invalid; [27]
- 3) Petition for review of the order of the Referee;
- 4) Certificate of mailing notice of hearing to settle form of Referee's certificate on petition for review;
- 5) Transcript of testimony.

Dated: March 3, 1944.

STEPHEN N. BLEWETT,  
Referee in Bankruptcy.

[Endorsed]: Filed Mar 4 1944. C. W. Calbreath,  
Clerk. [28]

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## DECLARATION OF HOMESTEAD (Wife)

Know All Men By These Presents: That I, Floy Turnbeaugh do certify and declare that I am a married woman, and that my husband's name is Ray Turnbeaugh, and that my husband, the said Ray Turnbeaugh has not made any declaration of homestead, and I therefore make this declaration for the joint benefit of myself and husband; that I do now at the time of making this declaration, actually reside with my family, consisting of my said husband and myself and Four (4) children on the land and premises, being all that real property in the County of San Joaquin. State of California, described as follows, to-wit:

A portion of the East 30 acres of the Southeast Quarter of the Southwest Quarter of Section 20, Township Two (2) South, Range Eight (8) East, Mount Diablo Base and Meridian, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of said Section Twenty (20); thence North  $89^{\circ} 13\frac{1}{2}$  West 60 feet to the West bank of Irrigation Canal and the point of beginning of the herein described parcel of land; thence North  $89^{\circ} 13\frac{1}{2}$  West, 174.9 feet to a point; thence North  $0^{\circ} 10\frac{1}{2}$  East to the Center of an Irrigation Ditch; thence along center of Irrigation ditch South  $89^{\circ} 13\frac{1}{2}'$  East, 182.45 feet to the West bank of Irrigation Canal; thence South  $1^{\circ} 49'$  West along West bank of said canal 263.25 feet to the point of beginning. Containing a 1.08 acres.

Subject to Irrigation ditch along the North line and County Road along the South Line thereof.

Acreage computed to include portion in road on South and Irrigation ditch on North.

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a Homestead, and I do hereby select, declare and claim the same as a Homestead.

That the actual cash value of said property, I estimate to be \$5,000.00 Dollars.

That no right of possession in and to said land and premises is vested in or exercised by any per-

son other than my said husband and myself, and that at the time of making this declaration, my possession or my said husband's possession is actual and rightful.

That the dwelling house and buildings located on said property are principally used for residence purposes, and uses incident thereto, and that said lands consist of contiguous and adjoining parcels.

[29]

That each and every declaration of homestead heretofore made by myself or by my said husband, or by us jointly, for the benefit of either of us or for our joint benefit, has been abandoned.

In Witness Whereof, I have hereunto set my hand, this 15th day of November, 1940.

FLOY TURNBEAUGH

State of California,  
County of San Joaquin—ss.

On this 15th day of November, in the year nineteen hundred and Forty, before me, K. G. Poile, a Notary Public in and for said County and State, personally appeared Floy Turnbeaugh known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] K. G. POILE,

Notary Public in and for said County and State.

## AFFIDAVIT

State of California,

County of San Joaquin—ss.

Floy Turnbeaugh, being first duly sworn, deposes and says, that she is the declarant named in, and whose name is subscribed to the annexed declaration of homestead, that she has read the same and knows the contents thereof, and that the matters contained therein are true of her own knowledge.

FLOY TURNBEAUGH

Subscribed and sworn to before me this 15th day of November, 1940.

[Seal]

K. G. POILE,

Notary Public in and for said County and State.

[Endorsed]: Recorded at Request of Stockton Guaranty Title Co. Nov 20 1940 at 58 min. past 2 o'clock P.M. in Book of Official Records Vol. 719 page 16 San Joaquin County Records. John D. Finney, Recorder. Fees \$1.20. [30]



At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday, the 9th day of March, in the year of our Lord one thousand nine hundred and 44.

Present: The Honorable Martin I. Welsh, District Judge.

No. 10150

No. 10151

In the Matters of

ORVEY RAY TURNBEAUGH,

DEVEINE FLOY TURNBEAUGH,

Bankrupts.

### ORDER APPROVING REFEREE'S CERTIFICATE

The Certificate of the Referee on review of Order having been heretofore heard and submitted, being now fully considered, it is Ordered that the Referee's Certificate be and the same is hereby approved, and that the order of the Referee denying bankrupt's claim of exemption to homestead premises be and the same is hereby affirmed. [31]

[Title of District Court and Causes.]

NOTICE OF APPEAL TO THE U. S. CIRCUIT  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT.

Notice is hereby given that Orvey Ray Turnbeaugh, bankrupt, and Deveine Floy Turnbeaugh, bankrupt, in the above entitled proceedings, and each of them, hereby appeal to the U. S. Circuit Court of Appeals for the Ninth Circuit from the Order made and entered by the above entitled Court on the 9th day of March, 1944, approving the Referee's certificate and affirming the Order of the Referee denying the bankrupts' claim of [32] exemption to homestead premises.

The within notice is intended to constitute a joint and several appeal by the said Orvey Ray Turnbeaugh and Deveine Floy Turnbeaugh, said parties having joined in the filing of same pursuant to Rule 74.

Dated this 27th day of March, 1944.

ERNEST J. TORREGANO,  
Attorney for Orvey Ray Turnbeaugh and Deveine  
Floy Turnbeaugh, Appellants in the above en-  
titled proceedings.

[Endorsed]: Filed Mar 28 1944. C. W. Calbreath, Clerk. [33]

[Title of District Court and Causes.]

### UNDERTAKING FOR COSTS ON APPEAL

Whereas, Orvey Ray Turnbeaugh, Bankrupt and Deveine Floy Turnbeaugh, Bankrupt, in the above entitled actions are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an Order of the District Court, In and for the Northern District of California, Southern Division, dated March 9, 1944, confirming the Referee's Certificate, and an Order of the Referee denying Bankrupts' claim of exemption to Homestead premises;

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, American Surety Company of New York, a corporation duly organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellants, that the said appellants will pay all costs which may be awarded against them on the appeal, or on a dismissal thereof, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00) to which amount it acknowledges itself bound.

It is further stipulated as part of the foregoing bond that in case of the breach of any condition thereof, the above named District Court may, upon ten days notice to the Surety, American Surety Company of New York, above named, proceed summarily in said action or suit to ascertain the amount which said Surety is bound to pay an account of

such breach, and render judgment therefor against said surety and award execution therefor.

Signed and Sealed at San Francisco, California,  
this 27th day of March, 1944.

AMERICAN SURETY COM-  
PANY OF NEW YORK,

By L. T. PLATT,

L. T. Platt—President Vice-  
President.

Attest B. D. SPERRY,

B. D. Sperry—Resident Asst.  
Secretary.

Bond #837941-K

Premium \$10.00 per annum.

[Endorsed]: Filed Mar 28, 1944. C. W. Calbreath, Clerk. [34]

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[Title of District Court and Causes.]

APPELLANTS' STATEMENT OF THE EVIDENCE AND EXCERPTS FROM TRANSCRIPT.

The above-entitled matters came on regularly for hearing on the 15th day of December, 1942, at the hour of 2:00 o'clock P.M. thereof, before Hon. Stephen N. Blewett, Referee in Bankruptcy, District Court of the United States, in and for the Northern District of California, Northern Division; the bankrupts, Orvey Ray Turnbeaugh and Deveine Floy Turnbeaugh, being represented by John O'Reilly, Esq., of Manteca, California; Nat Brown,

Esq., Attorney at Law, Stockton, California, appearing [35] as counsel for the Trustee; Messrs. Gumpert & Mazzera of Stockton, California, by J. Calvert Snyder, Esq., appearing on behalf of Mary A. Santos, a creditor filing exceptions.

The following proceedings were had and testimony taken, to wit:

The Referee: I think the witnesses may go into the other office there and have a seat—those of them that can be seated—because we can't accommodate all of them.

Mr. Snyder: All witnesses may go out, then?

The Referee: Yes. And call them as needed.

Are these matters to be heard together?

Mr. Snyder: Yes, if the court pleases.

The Referee: The matter of Orvey Ray Turnbeaugh, bankrupt, and Deveine Floy Turnbeaugh, bankrupt, for the purpose of this hearing, the matters will be consolidated.

Mr. O'Reilly: That is right; that is agreeable.

Mr. Snyder: We would like to call first Mr. Turnbeaugh, may it please the court.

The Referee: Yes.

Very well, will you be sworn, please?

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### ORVEY RAY TURNBEAUGH

called and sworn as a witness on behalf of excepting creditor, Mary A. Santos, testified as follows:

That his name is Orvey Ray Turnbeaugh and his wife's name is Deveine Floy Turnbeaugh.



(Testimony of Orvey Ray Turnbeaugh.)

That they both have filed petitions in bankruptcy and in these petitions in bankruptcy they are claiming as exempt certain real property described in the petition and are claiming them as exempt on the ground that they filed a Declaration of Homestead against the property; that it is his wife's signature on the original Declaration of Homestead and that is the same Declaration of Homestead under which he is claiming exemption [36] under his petition in bankruptcy.

Mr. Snyder: May we offer this as the Trustee's Exhibit first in order, Your Honor?

The Referee: It may be received.

The property described in the Declaration of Homestead was purchased during the month of August, 1940, and at that time it had no building thereon; that he subsequently built some building upon it; that the first building which he built upon the premises was a garage; that the garage has a concrete floor in it, four sides, of course, and the roof; that he obtained the lumber to build the garage from Moorehead Lumber Company, Escalon; that the lumber was delivered to him on Thursday, Halloween, October 31st of 1940; that he built the garage in a little less than two (2) weeks' time; that the size of the garage is twenty-two by twenty-four (22x24); that at the time it was built there was no water in it; that on November 15 they were living on the premises, his wife and himself; that there was not anyone else living in the garage.

(Testimony of Orvey Ray Turnbeaugh.)

Q. What did you have to sleep upon in the garage?      A. A bed.

Q. What kind of a bed?

A. A—(Witness producing document from pocket) we had a three-piece bedroom set, a spring and innerspring mattress, and we also had a library table and two rugs.

Q. And you put those in the garage, when?

A. November 14th.

Q. November 14th. Were they new?

A. They were new.

Q. Yes.      A. No, they were used.

Q. Those were things that you had before?

A. No. [37]

Q. Where had you gotten them?

A. Majestic Furniture Company, Modesto.

Q. Had you used those in the premises that you had been renting from Mr. Gagas?

A. No, sir.

Q. Now, when you moved in there and were living there, what did you use for lights?

A. Coal oil lamp.

Q. One coal oil lamp?

A. One coal oil lamp.

Q. What did you use for water?

A. We carried our drinking water there.

Q. Where from?      A. Gagas' place.

Q. Carried it from the Gagas place?

A. Yes.

Q. How far is that away?

(Testimony of Orvey Ray Turnbeaugh.)

A. Oh, I would say a mile and a quarter; maybe a mile and a half.

Q. And what did you use to cook on while you were there?

A. The first few days we were there we had an oil heater, one of those kind that you carry around; we saw that that wasn't sufficient to warm the garage, and I had an old wood stove, a wood heater, we moved that in.

Q. How long were you carrying water from the Gagas place down there?

A. Well, let's see. Well, let's see, I carried water to drink up until at least February the 6th or 7th.

Q. In other words, you carried water from November until February?

A. I carried water to drink, yes.

Q. Why didn't you put your well in sooner? [38]

A. I——

Mr. O'Reilly: Just a minute, if the Court please. Objected to as immaterial.

The Referee: Yes, I don't see the materiality of that.

Mr. Snyder: Q. Did you make an effort to have a well put in sooner?

A. I made an effort, yes, and got a well in.

Q. When was it you first made the effort to get a well put in?

Mr. O'Reilly: If you know, now. If you know the date, approximately, you can give that information. Otherwise, if the Court please, I don't think it is material, either; object to it upon that ground.

(Testimony of Orvey Ray Turnbeaugh.)

What we are interested in here is when he actually moved on and lived in the garage in question, so far as his homestead is concerned.

The Referee: What was the question?

(Whereupon the reporter read the question.)

The Referee: That will be allowed. All the facts and circumstances surrounding the transaction, I think, are proper to be shown.

A. Well, as far as making the effort is concerned, I wouldn't be able to set an exact date on that, but if I remember correctly the well was started on December 24th and was finished December 26th, of 1940.

Q. Were you living there when George Baumgardner dug the well for you?      A. Yes.

Q. You had this bed set, and everything there?

A. Yes.

Q. Cooking your meals there then?

A. No, didn't cook all our meals there.

Q. Where were you taking your meals?

A. We had our lunch; had warm coffee and we would eat our [39] lunch there when we would be working there on the place.

Q. Where would you eat the rest of your meals?

A. Where?

A. Yes.

A. I ate a number of them in restaurants.

Q. Isn't it——      A. And——

Q. Pardon me, were you through?

A. Yes.

Q. You recall renting a place from Mr. Gagas?

(Testimony of Orvey Ray Turnbeaugh.)

A. Do I recall renting a place from him?

Q. Yes. A. Surely.

Q. When was the last time you paid Mr. Gagas rent on the place that you were renting from him?

A. The last time I paid him rent—the last time I paid him any money was—wait a minute. (Pause). October 9th.

Q. You are sure you paid Mr. Gagas no rent in November and December and January and February? That is, November and December of 1940, and January and February of 1941?

A. Yes, I paid him rent, but not cash.

Q. But you paid rent, didn't you?

A. Yes.

Q. That's right? A. I paid him.

Q. And what were you paying that rent for during those months?

A. The rent that I traded out with him. There were three months rent that I traded out with him.

Q. What months were those?

A. Up to February 9th.

Q. And what was that rent for, rent on what?

A. Rent on what? [40]

Q. Rent on what, yes.

A. Rent on the Gagas house.

Q. That is the house you had been living in?

A. Yes.

Q. Prior to the time you purchased this place?

A. Yes, sir.

Q. And prior to the time you built your home?

A. Yes.



(Testimony of Orvey Ray Turnbeaugh.)

Q. And the last month that you paid rent in was February of 1941, that is correct, isn't it?

A. Now, just what do you mean by that?

Q. The last time you paid rent, whether you gave it by service or whether you paid cash, the last month's rent for the premises that you had been living in that belonged to Mr. Gagas was in February of 1941?

A. Paid up to February 9th.

Q. Of 1941?

A. Yes, that's right.

Q. That is correct. What did you have in these premises that you were renting from Mr. Gagas from October to February the 9th?

A. What did I have in it?

Q. Yes. Did you ever sleep on those premises during that period of time?

A. We didn't sleep there from November 14th, no.

Q. You did not?

A. No.

Q. Not a single night?

A. No, not a single night.

Q. All right. Did you eat any meals there?

A. Yes.

Q. What meals did you eat?

A. Breakfast and dinner. [41]

Q. Most of your breakfasts and dinners were eaten there prior to the time that your house was built, isn't that true?

A. Prior to the time the house was built?

Q. Yes, in other words, you ate your breakfast and dinner there while you were building the house

(Testimony of Orvey Ray Turnbeaugh.)

on the premises that you have homesteaded, isn't that right?      A. Surely.

Q. But you say you and your wife did not sleep there during that period of time?

Mr. O'Reilly: That has been asked and answered, if the Court please; objected to upon that ground.

The Referee: I believe that the witness has stated that neither of them slept on the Gagas premises after the 14th of November.

Mr. Snyder: I understood him to mean only himself. I may be in error there.

The Referee: Oh, yes. Well, in order to clear that up, I will allow the question.

Mr. Snyder: Q. When you said that you didn't sleep on the Gagas property from the 14th until February the 9th, 1941, were you referring to just yourself, or to your wife and yourself, both?

A. I am referring to my wife and myself.

Q. Did any of your family sleep in the Gagas house from November 14th up to and including February 9th?      A. Yes.

Q. Who?

A. Lyle, and Harley and my two little girls.

Q. Your two little girls and your two boys?

A. Yes.

Q. And they slept in the Gagas property until you got your home or house built on the homesteaded property? [42]

A. Until we got it so we could move them in.

Q. That is what I mean, yes. Now then, where

(Testimony of Orvey Ray Turnbeaugh.)

did you keep your clothes from November 14th up to February 8th, 1941?

A. I kept my—most of my clothes in the garage.

Q. Did you have any of your clothes in the place that you were renting from Gagas' during that time?

A. I think an old overcoat that I don't wear anymore.

Q. Is that all?

A. And there might possibly have been a pair of work overalls there a time or two, to be washed.

Q. But all of your other good clothes you kept out in the garage?

A. My good clothes, yes.

Q. How did you keep them hanging up, in the garage, or did you have a cabinet there you kept them in?

A. Why, hanging up.

Q. You hung them around the garage?

A. No, not around the garage; we hung them up in the corner.

Q. And during that time, of course, they were putting up the electric wires and things of that sort, in the garage?

A. No.

Q. Is that right?

A. No.

Q. When was the electric wiring put in the garage, before or after you started to live there?

A. After.

Q. How long afterwards?

A. I think the wiring was—our service was hooked up—well now, let me see.

Mr. O'Reilly: Do you have any data in your pocket to assist you?

A. Not on that, Mr. O'Reilly. [43]

(Testimony of Orvey Ray Turnbeaugh.)

Mr. O'Reilly: If you don't know, then you don't know.

The Witness: Okay.

Mr. Snyder: Q. Well, you don't know?

A. Well, I know approximately.

Q. All right, What is it?

A. I would say shortly after the first of February.

Q. Yes. And did you use the kerosene light or lamp up to that time, is that correct?

A. Kerosene lamp.

Q. Kerosene lamp. Now then, during the time from November 14th up to and including February 9th, 1941, you paid for the electricity on the premises that you were renting from Mr. Gagas?

A. Well, my boys paid for it.

Q. You didn't pay for it?

A. Lyle paid for it.

Q. As a matter of fact, Lyle is paying for the electricity on the premises you have homesteaded?

A. Yes.

Q. You have got that in his name?

A. No—the electricity, we never had it changed, that is all.

Q. In other words, there is no difference between the electricity as it stood prior to the time you started to build the property— A. No.

Q. And the present time, is there. You said "No", I believe. Now then, you say you cooked on a gas range or an oil range there for awhile when you first moved in.

(Testimony of Orvey Ray Turnbeaugh.)

A. How many times do I have to answer that, Mr. O'Reilly?

Q. I am asking the questions, Mr. Turnbeaugh.

A. Okay. We warmed up our coffee and we had sandwiches for our lunch, our noon meal, when I happened to be working on the place, between November 14th and February 9th. [44]

Q. Then I take it the only meals that you had on the homesteaded property were lunch goods and coffee?

A. That's right.

Q. From November 14th up to February 9th. Now, I call your attention to your Declaration of Homestead: You said that your four children were residing with you on these premises which you homesteaded beginning on November 14th, and thereafter. You have seen that in the Declaration of Homestead, have you?

A. Yes, sure.

Q. And you swore to that, didn't you?

Mr. O'Reilly: No, that is Mrs. Turnbeaugh's signature.

Mr. Snyder: Q. Floy and Ray. Floy is the wife.

A. Yes, sir.

Q. Now, so far as you know, none of your children took any of their meals, their lunch meals there from the period of November 14th up to February 8th?

A. Yes, they did.

Q. Which one?

A. Their lunches, when they happened to be there.

Q. When was that prior to November?

A. Prior to November?



(Testimony of Orvey Ray Turnbeaugh.)

Q. Yes. A. Before November.

Q. November 14th or 15th, prior to November 14th, who ate their lunch of the children?

Mr. O'Reilly: That is objected to, if the Court please, on the ground it is immaterial; the Declaration of Homestead was made on the 15th of November.

Mr. Snyder: We will withdraw the question.

Mr. Snyder: Q. Did any of your children that you can recall ever have any lunch on the homesteaded premises prior to November 15th, 1940?

[45]

A. Well, the same thing you just asked me. No.

Q. None of them? A. No occasion to.

Q. And did any of the children keep any of their clothes on the homesteaded premises prior to November 15th, 1940? A. Prior to that date?

Q. Yes. A. No.

Q. Did they have any of their clothes on the premises on November 15th, 1940? A. Yes.

Q. Which ones, and what clothes?

A. I don't remember which ones, but there was a pair of overalls hanging there that wasn't mine, so it was one of the boy's.

Q. Outside of this one pair of overalls, there was none other? A. Not that I can recall.

Q. And none of the children slept there prior to or on November 15th, 1940, did they?

A. Prior to?

Q. On or, either one.

A. Yes, prior to they did.

(Testimony of Orvey Ray Turnbeaugh.)

Q. Which children slept there?

A. Lyle and Harley.

Q. And did they sleep there every night?

A. One or the other of them did.

Q. Where did they sleep? A. In a tent.

Q. You had a tent outside of the garage?

A. We had a tent outside.

Q. When did you put the tent up?

A. Halloween night, Halloween evening, October 31st.

Q. And who stayed there that night, Halloween Eve, October 31st? [46]

A. I rather think both of them did.

Q. You and Mrs. Turnbeaugh were not there?

Mrs. Turnbeaugh: No.

The Witness: Ask that again.

Mr. Snyder: Q. Mrs. Turnbeaugh didn't stay there on October 31st? A. No.

Q. The boys helped you build the garage?

A. They poured—they helped pour the cement floor. I don't recall that they helped at all on anything else.

Q. And, as I understood it, you began building on the day after Halloween?

A. We poured the floor, we poured the floor on Sunday, which would have been November 2nd.

Q. November 2nd. Now, outside of this tent and this garage were there any other buildings on the premises at the time? A. No.

Q. And there were no other buildings on the premises on November 15th, 1940, other than this

(Testimony of Orvey Ray Turnbeaugh.)

garage and tent. Now, what did you have inside of the garage, say, on November 15th, 1940? Just the bed and these things that you have told us about?

A. Yes.

Q. No running water? A. No.

Q. And no sink or anything of that sort?

A. No.

Q. I take it, then, that you had no toilet facilities?

A. Well, we used toilet facilities; we had none, but we used toilet facilities. That is usually figured out some way or other.

Q. There was no particular provision made for it? A. Not on the 15th.

Q. Now, the bulk of your furniture was in the premises that you [47] were renting from Mr. Gagas on November 15th, 1940, wasn't it? A. Yes.

Q. And the bulk of your foodstuffs, that is other than the luncheon material, were over at Gagas' premises on November 15th, 1940?

A. That's right.

Q. About how far is the Gagas premises or are the Gagas premises, Mr. Turnbeaugh, from the property that you homesteaded?

A. It is either a mile and a quarter or a mile and a half. Approximately that.

Q. And on the Gagas premises you had a Rural Free Delivery box, didn't you? A. No, sir.

Q. You did not. Where did you get your mail?

A. Post Office Box 57, Ripon.

(Testimony of Orvey Ray Turnbeaugh.)

Q. You got it there all of the time?

A. Yes.

Q. In carrying this water this mile and a half what did you carry it in, buckets or thermos bottles?

A. I had some canteens, and I had a gallon bottle.

Q. You carried the water to wash in, too?

A. No, I said drinking water.

Q. Well, did you carry your water to wash in?

A. No.

Q. Where did you get your water to wash in that you had on November 15th, 1940?

A. What water was used, outside of drinking, at that time the ditch, the irrigation ditch that goes along the east side of our property, which is possibly 30 feet from the garage. There is a big hole there right past the gates, cement gates there. There was a big hole out there, and that hole stood full of water there practically, well, all winter. [48]

Q. Did you get the cement that went into the garage from the same place you got the lumber?

A. Yes.

Q. You got the lumber for the house from the Ross Lumber Company, that was a different place?

A. That was a different place.

Q. And none of the lumber that you got from the Ross Lumber Company went into the garage. You didn't use any of the lumber from Ross Lumber Company in the garage?

A. Well, for the lean-to to the garage.

Q. Do you know whether or not your wife kept her clothes in the garage on November 15th, 1940?



(Testimony of Orvey Ray Turnbeaugh.)

A. You will have to ask her about that.

Q. You don't know anything about that?

A. Well, she kept some there, I don't know what clothes she has got; I couldn't name each piece.

Q. You saw some of her clothes there?

A. Yes.

Q. Where were they hanging, up on the wall?

A. Yes.

That he had none of the other buildings on the premises at the time he filed the Declaration of Homestead; that the house was not built then; the pressure system, the electrical fixtures and the pumping system were not in then; that the estimated the value of the entire premises on November 15th, 1940, the date the Declaration of Homestead was placed on the property, at Five Thousand Dollars (\$5,000.00); that he wouldn't have taken Five Thousand Dollars (\$5,000.00) for it that day.

Q. I see. After that you put on all the houses?

A. It was all figured out, I knew just what I was going to do.

Q. Will you answer my question, please? You figure the lot and the garage as it stood on the day you put on your Declaration of [49] Homestead, was worth five thousand dollars, is that right?

Mr. O'Reilly: There is no evidence, if the Court please, to show that this is the lot.

Mr. Snyder: Well, an acre and a half; we won't quibble over that.

Mr. O'Reilly: It is worth quibbling over.



(Testimony of Orvey Ray Turnbeaugh.)

Mr. Snyder: Q. The real property described in the Declaration of Homestead, together with the garage that was on it at that time, you figured the value to be as of November 15th, 1940, five thousand dollars?

A. Yes, sir.

Q. And after that you added these other improvements. And how many rooms has the house got in it?

A. Six rooms.

Q. Six rooms. Is it a frame house?

A. Frame house.

Q. A six-room frame house. How many bathrooms in it?

A. One.

Q. One bathroom. And a pressure system?

A. Yes.

Q. And electrical fixtures and all that sort of thing?

A. Yes

Q. Did you landscape it afterwards, too?

A. Yes.

Q. And what would you say the value of the house alone is, Mr. Turnbeaugh?

A. The house alone? Oh, the house alone would have cost—would have cost right at \$4200.00, I would say.

Q. Then I assume that your present value of the property is around \$9200.00?

A. No.

Q. Well, will you explain yourself. You say the value without [50] the house on it is five thousand you figure the value of the house at forty-two hundred.

A. I can explain it, yes.

Q. Yes

(Testimony of Orvey Ray Turnbeaugh.)

A. I knew what I was going to build there and what I would have when I got it completed. I had negotiated on a loan, a loan was coming up to build the house, and the fact of the matter is, we had the corner stakes placed for the house that we were going to build, and we had our plans. I knew what was going to be there. I was going to make it my home. And that is the reason that I placed a valuation—I wouldn't have taken five thousand dollars for it on November 15th, knowing about that.

Q. With just the garage there? A. Yes.

Mr. Snyder: That is all.

Mr. O'Reilly: No questions.

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### DEVEINE FLOY TURNBEAUGH,

called and sworn as a witness on behalf of excepting creditor, Mary A. Santos, testified as follows:

That it is her signature on Trustee's Exhibit No. 1 for identification on the bottom of the first page and she swore to it before Notary Public K. G. Pale when she signed it; that the only building at the time that she swore to the Declaration of Homestead was a garage.

Q. And it was after you filed this Declaration of Homestead that this five-room house was built, and these other things were put on it, isn't that true? A. Yes.

Q. I take it, then, that you felt that the real

(Testimony of Deveine Floy Turnbeaugh.)

property described in this Declaration of Homestead, together with the garage, were worth five thousand dollars on the day you signed this? [51]

A. Well, it was to me.

Q. It was to you?           A. Yes, sir.

Q. Then if it was worth that much to you at that time, the addition of these other buildings increased its value to you later, isn't that true?

A. Well, in a way, maybe. Well, not in value of money, it didn't.

Q. Now, when did you move on the premises yourself?           A. November 14th.

Q. By "Move on" what do you understand me to mean?           A. Well, we slept there.

Q. You slept there?

A. We moved our furniture in there and slept there; that is, the bedroom set—

Q. Yes.

A. (Continuing) that you already know about.

Q. The first night that you slept there was when?

A. November 14th.

Q. November 14th. And your dinners and breakfasts you had been eating over at the Gagas property?           A. Yes.

Q. And you continued to eat them over there after November 14th, 1941, didn't you, that is correct, isn't it?

A. After November 14th, well, certainly.

Q. Yes. And your two little girls continued to sleep and eat over in the Gagas property up until February of 1941, February 9th, to be exact?

(Testimony of Deveine Floy Turnbeaugh.)

A. Well, yes.

Q. And I don't suppose you took all of your clothes and dresses and things over—

A. Well— [52]

Q. (Continuing) to the garage?

A. Well, I took some of them. I don't recall whether I took everything that I owned or not, but I took some of them.

Q. You moved your bedroom set on the premises on November 14th?           A. Yes.

Q. In the morning or in the afternoon?

A. It was right after lunch, I believe it was.

Q. And where did the bedroom set come from?

A. From the Majestic Furniture Company in Modesto.

Q. And you had hauled or taken your clothes over before the bedroom set came?

A. After the bedroom set.

Q. In the afternoon?

A. I moved the bedding and the night clothes and our clothes there in the evening of November 14th.

Q. That is your husband's and yours?

A. Yes.

Q. And what eating facilities did you have on November 14th, 1941?

A. The little oil heater.

Q. I mean 1940.

A. Just one of those little coal oil. We only kept it a day or two, and then we put in a wood stove because it wasn't of sufficient warmth.

(Testimony of Deveine Floy Turnbeaugh.)

Q. And you had no running water then?

A. No.

Q. You had no modern washroom facilities then?

A. No.

Q. You had none whatever, really?

A. No, none.

Q. No foodstuffs was kept on the premises?

A. Well, we just—just enough to make our coffee and lunch. [53]

Q. Well, when did you bring that over, on the 15th or the 14th?

A. Oh well, we kept bringing it in whenever we needed it. I wouldn't be able to say exactly.

Q. Well, if you moved in on the afternoon of the 14th I don't suppose you had anything there on the 15th yet, did you?

A. I don't remember whether we ate lunch there the next day or not.

Q. So far as you can recall you hadn't eaten anything, any meals, on the premises prior to November 15th, 1940?

A. Yes, I believe when we was building the garage, while we were working there we ate there, too; would take our lunch and eat there.

Q. Lunch stuff?

A. No regular cooking, but coffee.

Q. Do you remember what time of the day it was that you executed this Declaration of Homestead?

A. What time of day?

Q. Yes.



(Testimony of Deveine Floy Turnbeaugh.)

A. Well, I believe before dinner; I wouldn't say for sure. I am pretty sure it was in the morning, though, before lunch.

Q. Where was it executed?

A. Why, in Mr. Galt's office in——

Q. Stockton?

A. Stockton. What do you call it?

Q. Stockton?

A. Guaranty—Guaranty & Title.

Q. I take it that you came in and discussed this Declaration of Homestead with him before you prepared it?

A. We had spoke—I suppose I can go into detail?

Q. Yes, I want you to, please.

A. On the 15th of October we finished up our deal, got our [54] deed, and my husband said he wanted to put a homestead on the place, and he says, "You absolutely can't put a homestead there without living there."

Q. I see.

A. Sleeping there. So he gave us thirty days to put that building up and sleep there. That is the reason that we slept there the night of November the 14th, so the 15th would be our thirty days.

A. I see. Then the first and only night that you slept there prior to November 15th, 1940, was the 14th?

A. Was the 14th.

Q. Am I correct?

A. Of November.

(Testimony of Deveine Floy Turnbeaugh.)

Q. And on the 15th did you have your breakfast and dinner over at the Gagas property?

A. I believe.

Q. And all of your furniture, other than this one bedroom set, was over at the Gagas property on the 15th of November, 1940?

A. Yes. I don't think we had brought down anything yet at that time.

Q. This bedroom set that was in the garage, that was a new one that was purchased?

A. Well, it was a secondhand bedroom set.

Q. I mean, it wasn't any of the furniture that you had been using when you lived over at the Gagas property? A. No.

Q. Now, you and your husband were the only ones who slept there on the afternoon—or the evening of the 15th of November, 1940?

A. On the 15th?

Q. Yes—the 14th, I beg your pardon.

A. Yes.

Q. The 14th? [55] A. Yes.

Q. Do you remember how long it was—the next day it was, it took you to prepare this homestead, were you in Stockton most of the next morning?

Mr. O'Reilly: If the Court please, I think that is immaterial.

Mr. Snyder: I will withdraw the question.

The Referee: Very well.

Mr. Snyder: Q. You don't remember what time of day you came into Stockton to prepare this homestead?

(Testimony of Deveine Floy Turnbeaugh.)

Mr. O'Reilly: Just a minute. If the Court please, objected to upon the ground it has been asked and answered.

Mr. Snyder: She thinks in the morning.

Mr. O'Reilly: Well, that is the answer.

A. Well, in the morning, but I don't know the time of day of the morning. I know it was before lunch.

Mr. Snyder: I see. Now, on the 15th—let's see if I'm correct on this—what clothes did you have other than your working clothes over at the premises that you homesteaded?

A. Well, I had a coat—the one that I had was a good coat, my dress coat at that time, and of course my night clothes, and I believe that I had a house-dress or two there.

Q. The majority of your clothes, however, were over at the Gagas property, Mrs. Turnbeaugh?

A. Well, I imagine I left my best clothes there for the time being.

Q. Did you sleep in the Gagas premises at all after November 15th?

A. I didn't, not a night.

Q. Not a night. Now, on November 15th you had no eating or cooking facilities other than this little gas——

A. Nothing but the coal oil. [56]

Q. Coal oil burner? A. At that time.

Q. And you had no cooking utensils, I take it, other than a coffee pot, in the house?

(Testimony of Deveine Floy Turnbeaugh.)

A. Well, I don't remember. It seems like I might have had—Well, I won't say, I don't have any memory.

Q. In other words, a coffee pot is about all that would fit on top of a coal oil heater, isn't it?

A. Yes, or a kettle for heating water.

Q. I take it that a lot of your other personal effects, like your papers——

Mr. O'Reilly: Now, just a minute, if the Court please. Go ahead.

Mr. Snyder: Q. (Continuing): ——and medicines and things that an individual collects through a lifetime, the majority of those things were kept on the Gagas property and were on the Gagas property on November 15th, 1941 (1940)?

Mr. O'Reilly: Objected to as immaterial.

The Referee: Well, the objection is overruled. I think it is material.

Mr. Snyder: Q. Will you answer that for me, please?

Mr. O'Reilly: Objected to, further, upon the ground that it is assuming something not in evidence.

The Referee: It might be.

Mr. Snyder: Q. You, in a lifetime, of course, have collected a lot of knickknacks and things of that sort that you keep, keepsakes and things of that kind? A. Not very many.

Mr. O'Reilly: Just a minute. Objected to, calling for conclusion of the witness.



(Testimony of Deveine Floy Turnbeaugh.)

Mr. Snyder: Q. You have some, is that correct?

The Referee: Just a moment. [57]

Mr. Snyder: I will withdraw the question. I will reframe it.

Mr. Snyder: Q. All of your receipts and legal papers that you had acquired and kept—Do you keep them, by the way?

A. Do I keep them?

Mr. O'Reilly: Just a minute, Mrs. Turnbeaugh. The same objection, if the Court please.

The Referee: What is the objection?

Mr. O'Reilly: The objection is, assuming something not in evidence, and it is immaterial and it is calling for conclusion.

Mr. Brown: If your Honor please, this is an examination on behalf of creditors, and the question of whether or not this homestead is valid goes to the question of the good faith of the transaction, and that being so, it has been repeatedly held in these matters that this examination should assume the widest latitude; this is a matter in which we have creditors who are interested, who have moneys coming, and this is either their property or it is not their property, and therefore the technical objections interposed by counsel are entirely out of order.

The Referee: Well, I might say this: On a general examination there is a very wide latitude, but here we have a side issue in dispute, and I think probably we should be bound a little more closely to the rules of evidence.



(Testimony of Deveine Floy Turnbeaugh.)

Mr. O'Reilly: Now, if the Court please, it is understood that rather than to have me object continuously here, the original objection made is stipulated to, is it not, that as to each and every question asked the same objection applies?

Mr. Brown: The objections from now on are the ones we are concerned with; we feel that it is directly within our rights to ask these questions. This is an attack upon a homestead.

Mr. O'Reilly: It is stipulated? [58]

Mr. Brown: You can object from now on. We submit, if Your Honor please, this is a part of Section 21-A examination, and therefore really, properly, no objection is to be made.

The Referee: Well, this bankrupt is claiming this homestead.

Mr. Brown: Yes, Your Honor.

The Referee: And I think any questions material to its validity, in asserting its validity may be asked by the Trustee.

Mr. Brown: Yes, Your Honor.

The Referee: And I will overrule the objection.

Mr. O'Reilly: The validity, however, in this instance, as I understand it, and in accordance with the petition that is already on file, is that they were not living on there when the declaration was made.

The Referee: Of course, all the elements necessary to a homestead, the value, whether it exceeds the value of \$5,000.00, whether they were actually residing on it at the time, are pertinent matters of inquiry.

(Testimony of Deveine Floy Turnbeaugh.)

Mr. Brown: I am reading from the Declaration: "That I do now, at the time of making this declaration, actually reside with my family, consisting of my said husband and myself and four children."

Now, is counsel going to have us believe that that is untrue?

The Referee: Well, ask the questions.

Mr. Brown: Q. Will you tell us, then, Mrs. Turnbeaugh, whether or not the sum of \$200.00, being the sum testified to by your husband, was the fair and reasonable market value of the garage which was on the premises when you first slept therein? A. Well, I guess so.

Q. You guess so. Now, will you tell us what you meant when at the time you swore to this declaration you said that the actual [59] cash value of the property at that time you estimated to be the sum of \$5000.00?

Mr. O'Reilly: That is objected to on the ground it is argumentative.

The Referee: Well, she may have some good reasons for her statement.

Mr. O'Reilly: The document speaks for itself.

The Referee: I don't know; let the witness state.

A. Well, to me—I had been married twenty-seven years.

The Referee: Objection overruled.

A. (Continuing): And never owned a piece of property, never had anything. And to me that place was worth five thousand dollars, if it was worth a dime.

(Testimony of Deveine Floy Turnbeaugh.)

Mr. Brown: Q. Were you told that it was your own idea of the value or the actual reasonable market value at the time you executed the homestead, by your counsel?

Mr. O'Reilly: If she had counsel.

Mr. Brown: Q. Well, were you advised when you made this homestead?

A. Well, only by Mr. Galt.

Q. Yes. You went to Mr. Roy Galt, who is manager of the Stockton Guaranty Title Company, didn't you? A. Yes.

Q. And you counseled with him about putting on a homestead, didn't you?

A. We asked him about it, yes.

Q. Yes. And you understood him to be the manager of the Stockton Guaranty Title Company at the time?

A. And expected what he told us to be absolutely on the up and up.

Q. And you told him the facts?

A. Yes, sir. [60]

Q. And it was upon the facts that you related to him that he advised you what to do, isn't that correct? A. Yes, sir.

Q. That's right. Now, at that time did you have a judgment owing against you by Dick's Service, of Pomona, California?

Mr. O'Reilly: I think the record, if you have one there, Mr. Brown, is the best evidence.

The Witness: I think so, yes, I believe so.

Mr. Brown: Q. You did. And at that time

(Testimony of Deveine Floy Turnbeaugh.)

did you have claims owing to the Stockton Merchants Association for collection in favor of the Turner Hardware Company of Escalon?

A. Yes.

Q. What was your answer? A. Yes.

Q. And at that time did you have a judgment against you——

A. They weren't against me, those bills weren't against me; they were against my husband.

Q. Well, didn't you list them as judgments against yourself? Isn't that your signature, isn't this your signature?

A. Well, they are—they were listed as our debts, of course.

Q. Well, you swore that they were against you, didn't you?

A. Well, they were against me, but as we went on I don't think that that was considered—I don't suppose that at that time it was considered things that was his—of course we put them in together. I don't know.

Q. Well, you swore that these were your debts, didn't you?

Mr. O'Reilly: That is true; it is so stipulated.

A. Well then, I guess they would be considered my debts as well as my husband's.

Mr. Brown: Q. And at that time did you owe a judgment to Barbara Gordon as nominal plaintiff for the Acme White Lead Company? [61]

A. Yes.



(Testimony of Deveine Floy Turnbeaugh.)

Q. And at that time did you owe the Ross Collection Agency a bill in favor of Highiet's Wrecking Company? A. Uh-huh (affirmative).

Q. And at that time did you owe other of the various creditors whose claims you have listed in your bankruptcy, to wit, at the time of the execution of this homestead, Declaration of Homestead?

A. Yes.

Mr. O'Reilly: Objected to——

Mr. Brown: Q. You did.

Mr. O'Reilly: Same objection, if the Court please, as I made in the beginning; it applies to each and every one of those questions.

Mr. Brown: It goes to the question of the good faith of the declaration, if your Honor please.

The Referee: Objection overruled.

Mr. Brown: Q. And did you not, Mrs. Turnbeaugh, discuss this matter with your husband and jointly come to the conclusion and thereupon declare your homestead on this property, with the sole intent and purpose of defrauding and preventing these creditors from recovering their just debts against you? A. No.

Mr. O'Reilly: Just a minute, if the Court please.

A. I wouldn't say that.

Mr. Brown: Q. What is that?

A. They were old debts, but they were not the main debts.

Q. You owed them, didn't you?

A. Certainly.



(Testimony of Deveine Floy Turnbeaugh.)

Q. And you owed them that money at the time you declared your homestead?

A. Well, what do people usually put a homestead on for?

Q. I don't know, I am asking you, Mrs. Turnbeaugh. Did you know [62] at the time that you made the Declaration of Homestead that you and your husband owed debts, including judgments in various parts of California? A. Yes.

Q. And did you not put on the homestead for the sole and express purpose, you and your husband, of preventing and defrauding these creditors from obtaining their just claims against you? Yes or no?

Mr. O'Reilly: Objected to, if the Court please, on the ground that it is not material to the issues here.

Mr. Brown: If Your Honor please, this is my purpose for this:—

The Referee: I believe that a person has a right to put on a homestead if—

Mr. Brown: Yes, Your Honor.

The Referee (Continuing): —the circumstances are sufficient to meet the statute. But many times they are sued and there is an attachment on their land and still they put on a homestead.

Mr. Brown: Yes, Your Honor. But the question of good faith is going to be in issue.

The Referee: I appreciate that it is a question of good faith. But I don't think it is necessary to pursue that because, as far as the debts are con-

(Testimony of Deveine Floy Turnbeaugh.)

cerned, they were all admitted to be owing at the time.

Mr. Brown: Just so Your Honor has my thought on this matter.

Mr. Snyder: The point that I have to make, and I think it is perfectly obvious: they put a Declaration of Homestead and claimed a value on the real property of five thousand dollars, and both of their testimony indicates they have in the back of their minds the construction subsequently of a house upon the [63] premises. Now, they go out and incur these bills with Mrs. Santos and the rest of them. A thousand dollars of this widow's money went into this.

Mr. O'Reilly: That is objected to——

Mr. Snyder (Continuing): That is not good faith.

The Referee: That is something you have to establish yet.

Mr. Brown: This is preliminary.

The Referee: I mean, as to the debts that were owing, it is already admitted that they were owing; now, we will proceed to the debts that were incurred subsequently and for what purpose they were incurred.

Mr. Brown: Very well, Your Honor.

Mr. Brown: Q. Now, when the Moorhead Lumber Company bill that you have listed in your schedules—and your schedules were filed in this matter on August 7th, 1942—for what account was that

(Testimony of Deveine Floy Turnbeaugh.)

incurred, for improvements on the property or the garage?

A. Well, I think the biggest part of it was for paint that we had, that my husband had.

Q. Used where?

A. At different jobs that he used to be a painter on.

Q. Was any of that paint used in the construction of the improvements upon the land that is the subject of this homestead?

A. Well, you would have to ask him, I wouldn't know where they came from.

Q. You wouldn't know. The Ross Lumber Company of Modesto, for what was that bill incurred, do you know?

A. Well, that was the——

Mr. Snyder (Interposing): I think he already testified that that went into the house.

Mr. Brown: Q. Do you know? If you don't know, you just tell us so, Mrs. Turnbeaugh. After all, your husband—— [64]

Mr. O'Reilly: If the Court please, this is the second time that he is going over these same bills; it is reiteration of the same thing.

The Referee: These bills were not embraced in the question—at least, as to what purpose.

Mr. Brown: Do you want an explanation? Would Your Honor wish me to declare my purpose in this? I think it is very obvious; in other words, if these bills, if Your Honor please, went into the improvements upon this property, it again goes to the question of good faith.

(Testimony of Deveine Floy Turnbeaugh.)

The Referee: Oh, you may ask the question, but, nothing to counsel, I think probably this question is directed at an additional subject.

Mr. Brown: I want her to state, Your Honor, so if you will bear with me on this thing.

The Referee: That was inquired about, before.

Mr. Brown: May I proceed?

The Referee: I was doing that in explaining my ruling.

Mr. Brown: Q. Now, the Ross Lumber Company bill, for what was that incurred?

A. The Ross Lumber Company?

Q. Yes.

Mr. O'Reilly: If you know, Mrs. Turnbeaugh, if you don't know, so answer.

A. Well, it was—a part of it was on that lean-to on the garage, I think.

Mr. Brown: Q. On this same garage?

A. Yes.

Q. That you have testified about?

A. Yes. We built a lean-to onto it.

Q. And the Noah Adams Lumber Company at Suisun, what is that for? [65]

A. That is my husband's paint bills.

Q. And Dick's Service, what is that for?

A. That was gasoline.

Q. And the Turner Hardware Company, Escalon, what is that for?

A. That occurred about ten or twelve years ago, and it was paint.



(Testimony of Deveine Floy Turnbeaugh.)

Q. Had nothing to do with this property?

A. Nothing whatever.

Q. And Mrs. Mary Santos, what was that for?

A. My husband borrowed that money to help out with a paint job that he had, and we also paid some little various bills that we owed.

Q. Was that a secured or unsecured debt?

A. It was a note.

Q. A note. Any part of that money go into the construction of this property?

A. Not a cent of it.

Q. Not a cent of it. When did you get that money from Mrs. Santos?

A. On the 25th day of September, 1941.

Q. 25th day of September, 1941. And no part of that money went into this property?

A. No.

Q. You are positive of that?

A. Our house was completely built at that time.

Q. And then the Den Dulk Hardware Company of Ripon. What was that incurred for?

A. That was some tools.

Q. Used for——

A. Was used on the house.

Q. On the house?           A. Yes. [66]

Q. The house that is the subject of this home-  
stead, is that correct?           A. Yes.

Q. And the Gensler Lee—no. The Roberts Plumbing Company of Manteca. What was that incurred for?



(Testimony of Deveine Floy Turnbeaugh.)

A. Well, it was some—Our plumbing bill went way over what was allowed, and that is what we did.

Q. On the improvements on this homesteaded property, is that correct? A. Yes.

Q. And the Acme White Lead & Color Works of Oakland, where did that bill go?

A. Well, that was a paint bill.

Q. Did it go into the homestead? A. No.

Q. No. And the Fuller Paint Company, where did that go?

A. I believe that was ladders or something of the sort.

Q. Latz Paint Company of Stockton, where did that go?

A. That, I don't know what that was.

Q. You don't know, Pittsburgh Paint Store in Stockton. Where did that paint go?

A. That was a sander, I believe, the renting of a sander. It wasn't for us.

Q. For where?

A. Wasn't for us. Work that was done in Suisun.

Q. Now, Mrs. Turnbeaugh, when you were living out at this place that was homesteaded, how far were you from the town of Ripon?

A. Well, I guess it is considered about a quarter of a mile. I don't know whether it is that far or not.

Q. About a quarter of a mile. And I suppose you did your shopping for your home in the town of Ripon? A. You mean groceries? [67]

(Testimony of Deveine Floy Turnbeaugh.)

Q. Yes, whatever you got, your provisions and supplies.      A. Yes, mostly.

Q. And were any of these supplies delivered to you? And I am talking to you about the dates of November and December, 1940.

A. Were they delivered?

Q. Were they delivered to you?      A. No.

Q. You went and got them?      A. Always.

Q. And brought them to your home?

A. Yes.

Q. And when you went to get these supplies, including bread and flour and meat and other necessary provisions, did you bring them to this place where the garage was, or did you bring them to the house where the Gagas' lived?

A. I guess we took them to the house where the kids lived.

Q. Where the children lived. And did you have a washing machine?      A. Yes.

Q. And did you do the children's washing?

A. Yes.

Q. What?      A. Yes.

Q. And where did you keep your wash machine?

A. At the Gagas place.

Q. And did you have an ice box?      A. No.

Q. Did you have any means of refrigeration?

A. No.

Q. You had no electric ice box?      A. No.

Mr. O'Reilly: She said no means of refrigeration. [68]

(Testimony of Deveine Floy Turnbeaugh.)

Mr. Brown: Q. No means at all?

A. No, not there.

Q. What do you mean "not there"?

A. We had one and we let it go back, but I don't remember what date that was. But I don't think it was—I think it was before that time.

Q. Where did you have it, at which place?

A. At the Gagas place.

Mr. O'Reilly: That is objected to as incompetent, irrelevant and immaterial.

Mr. Brown: Q. Now, did you have any heaters?

A. Where?

Q. Well, wherever you had them. Did you have any heaters, any means of heating?

A. Well, had a circulating oil heater at the Gagas place, and we had the wood stove heater at the garage.

Q. Now, the children, of course, bathed in the usual way that all children do, didn't they?

A. Naturally.

Q. I am talking now about the months of November, December, January and February of 1941. Where did they do their bathing?

A. At the Gagas place.

Q. As a matter of fact, isn't this the truth, Mrs. Turnbeaugh——

Mr. O'Reilly: Now, just a minute.

Mr. Brown: Q. And isn't this the entire truth: that your actual and real and only home was the Gagas home, and the other place was a blind for the

(Testimony of Deveine Floy Turnbeaugh.)

purpose of preventing creditors from coming after you?      A. No.

The Referee: Do you want to make an objection? I will sustain it, because that is really the point to be determined in the case, so it would be calling for conclusion of the witness. [69]

Mr. O'Reilly: However, I believe she has answered the question, if the Court please.

The Referee: That is a matter within the province of the Court to determine at the end of the hearing.

Mr. Brown: Q. Did you and your husband have tools—What is your husband's business, Mrs. Turnbeaugh?

A. My husband is ill and not able to do anything now, but he was a painting contractor.

Q. When you say he was a painting contractor, you mean in November, 1940?

A. He was at that time, yes.

Q. And he had, of course, certain scaffolding, he had ladders and paint and brushes and supplies and tools, did he not?      A. Uh-huh.

Q. And in addition to everything else, he had an automobile truck?      A. Well, yes.

Q. Well, did he or didn't he?

A. Well, one with a spray outfit on it.

Q. The one with the spray outfit on it. And what kind of a truck was that?

A. An old Ford.

Q. Beg pardon?      A. A Ford.

Q. What year?

(Testimony of Deveine Floy Turnbeaugh.)

A. Golly, I wouldn't know.

Q. And that was a truck—a flat rack truck, as we call it?

A. It was built up for a spray outfit.

Q. Built up for a spray outfit. Where is it now?

Mr. O'Reilly: Now, just a minute, if the Court please. What are we here for anyway, to determine the validity of this homestead or to go into all—— [70]

Mr. Brown (Interposing): If Your Honor please——

Mr. O'Reilly: Just a minute, Mr. Brown.

Mr. Brown: Very well.

Mr. O'Reilly: If the Court please, to go into all these items when the time has passed for the examination thereof, or is this the hearing as to the homestead?

The Referee: Of course the time hasn't passed for an examination, but I believe we should restrict this hearing to the homestead.

The Referee: I think it would be well to confine this issue to the homestead; that is what we are here for. We are loading up a record here with a lot of other material and if this thing is reviewed it is going to have the upper court wondering where the issue is. So I think we had just better eliminate that and have the matter for a separate hearing.



## ORVEY RAY TURNBEAUGH

recalled as a witness for and on behalf of the Trustee, testified as follows:

That he has been in Court during the examination of Mrs. Turnbeaugh by Mr. Snyder and Mr. Brown, and referring to the date of the execution of the homestead, trustee's exhibit No. 1, he did owe some money to the Moorehead Lumber Company of Escalon; that he did not owe any money to the Ross Lumber Company; that he owes some money to the Turner Hardware Company; that he did not owe any money to the Den Dulk Hardware Company; that he did not owe any money to Roberts Plumbing of Manteca, nor to the Acme White Lead & Color Works of Oakland; that he did owe some money to Highiet's Wrecking Company; that he did not owe any money to the Latz Paint Company of Stockton, nor to the Pittsburgh Paint Store of Stockton; that of those bills [71] which were incurred for improvements made on the real property were the Moorehead Lumber Company, Ross Lumber Company, Den Dulk Hardware Company, Roberts Plumbing and G. N. Hilburn and Albert Welty. That is all. That he owed other creditors money at the time the homestead was recorded; that at the time the homestead was recorded he owed Mrs. Bessie Woods, Dick's Service Station, Bank of America, Chino, Turner Hardware Company of Escalon, Standard Oil Company of Fresno, Highiet's Wrecking, Fuller Paint Company of Fresno, and Dr. Den Dulk, of Ripon. That is all. That at that time he could not

(Testimony of Orvey Ray Turnbeaugh.)

pay promptly his debts, including those named which he has just read off, as the same fell due upon the demands of the creditors; that he was not in his opinion insolvent but he could not pay his debts as they fell due.

Examination by Mr. Snyder:

Q. Mr. Turnbeaugh, when you borrowed money from Mrs. Santos, didn't you tell her that you were going to use it to pay for the Venetian blinds that went in your new home?

A. I didn't tell her that, no.

Q. You never, at any time?           A. No.

Q. What did the \$1250.00 go for that you borrowed from Mrs. Santos?

A. It went to promote, to buy equipment, and to promote work, big work that I had coming up.

Q. The whole \$1250.00?

A. Yes. Let me explain.

Mr. O'Reilly: Go ahead and explain.

Mr. Snyder: Q. Go ahead; I am listening.

A. No, you are not.

Q. You go ahead.

A. I want you to hear this.

Q. You go ahead; go on. [72]

A. I have had angina for a number of years; it has gradually gotten worse.

Q. Yes.

A. Well, from, I would say, about the 1st of November in 1941 I had opportunities to figure big work, spray work, where I could make some money on it, and I had some work for C.P.C. over at Sui-

(Testimony of Orvey Ray Turnbeaugh.)

sun, and also some at Fresno for C.P.C., and this money, that was used to put the spray equipment in shape to handle the big work. It was something near \$400.00 that was spent on the outfit, hose, guns and pots, and I paid a hundred dollars—I have got a receipt for it here—on a car.

Q. Which car was that? A. The Mercury.

Q. By the way, where is that Mercury now?

A. I wouldn't know. I think my son has it yet. And I paid a note at the bank out of that that I owed, and I paid my son in back wages right at \$150.00, I don't remember the exact dollars and cents, and some small miscellaneous bills. There wasn't a cent of that money used on the house.

Q. And, as I understood it, you never told Mrs. Santos that?

A. I never told Mrs. Santos, no, I didn't.

Q. Did any of your family?

A. I wouldn't know.

Q. All right.

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W. C. ALLEY,

called and sworn as a witness on behalf of the excepting creditor, Mary A. Santos, testified as follows:

That he is Supervisor for the Pacific Gas & Electric Company and has under his immediate supervision and control the records of the Pacific Gas & Electric Company installations in and around Manteca and Ripon; that he brought with him the rec-

(Testimony of W. C. Alley.)

ords of the installation for the Turnbeaugh's; that according [73] to the records, on February 1, 1941, there was a light meter installed there to supply lighting service and the electric range; that prior to that time they used to live on Murphy Ferry Road and that both of the accounts were kept in the name of Lyle Turnbeaugh.

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SAM VAN DYKEN,

called and sworn as a witness on behalf of excepting creditor, Mary A. Santos, testified as follows:

That he is one of the partners of the N & S Home Appliance Company, electrical contractors; that he installed a water pressure system on the Turnbeaugh property which they had just recently purchased out by Manteca; that the first thing that was installed was the pump; that prior they installed a pitcher pump, a hand-operated pump; that the hand pump was installed January 21, 1941; and that the pressure system was installed on the 28th day of January, with the exception of the electrical work. That was completed on the 31st day of January. That was a temporary service to the garage and pump, and that included the installation of an electric range; that he installed it, himself. That he couldn't say when he put the electrical service in the garage, itself, whether he saw any bedstead there, a bed and bureau; that he didn't know as to whether or not he saw any cooking facilities or any-



(Testimony of Sam Van Dyken.)

thing of that kind, except that he installed the electric range at that time. That he can't recall whether there were facilities that could be used with the range at that time; that he has no recollection.

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GEORGE BUMGARDNER,

called and sworn as a witness on behalf of excepting creditor, Mary A. Santos, testified as follows:

That his business is well drilling; that he drilled a well for Mr. Turnbeaugh on his new property recently; that he couldn't tell the exact date but they moved in around the 28th [74] and finished around the 2nd or 3rd of January, 1941; that when he went there to install or to dig this well, Mr. Turnbeaugh was not there at the time he moved in on the job; that he had to go to the other residence and get him to come down to show him where he wanted it. He believed he was up at the Gagas residence then. That at the time he moved in during the morning there was not anyone at all around the premises; that he did not see anyone sleeping around there; that he doesn't remember nor would he commit himself on that as to whether there was any evidence of anyone cooking meals or having any facilities for cooking meals around there when he went in there because he was not inside the building at all; no, he did not go inside the building.

Mr. Snyder: Q. Did Mr. Turnbeaugh, himself,



(Testimony of George Bumgardner.)

state anything to you about where he could be found?      A. No.

Q. How did you know where to go, Mr. Bumgardner?

A. Well, the lumber company told me where I would find him.

The Referee: Well, I don't believe that would bind Mr. Turnbeaugh.

Mr. Snyder: No, that is correct.

The Referee: That may go out.

Mr. Snyder: Yes.

Mr. Snyder: Q. When you found Mr. Turnbeaugh that morning what was he doing, do you recall?      A. He was in the house.

Q. He was in the house. And you had to ring the bell for him to come out?

A. Yes, or knocked on the door.

Q. Did you stay outside or did you go in?

A. I stayed outside.

Q. Do you remember about what time of the day it was? [75]

A. Oh, about 9:30 I would imagine.

Q. Now, you were digging that well from Christmas to New Year's Day, is that correct, in that vicinity?

A. No, I think we moved in about the 27th or 28th and finished after the first of the year, around the 2nd.

Q. Did anyone else come over there while you were digging the well besides Mr. Turnbeaugh?

(Testimony of George Bumgardner.)

A. Well, they were working there, doing some carpenter work, as I remember.

Q. On the garage?

A. Well, there was a little building there.

Q. Did you see Mrs. Turnbeaugh around at all?

A. I think she was there some of the time, yes.

Q. Some of the time. Do you remember any of them eating lunch there in your presence?

A. Not that I know of.

### Cross-Examination

By Mr. O'Reilly:

Q. This little house that you refer to was already constructed then, was it not?

A. Well, they were doing carpenter work at the time I was there working.

Q. Putting up the lean-to, wasn't it?

A. Yes, I believe that is right, in the back, yes.

That the records which he has show only the date of the well, the date of the invoice that he sent to the lumber company and that he can show the date when he entered it in his book and sent them an invoice; that the book has 1941, January 1st and that is the first job in 1941 that he had, so he must have moved in about the 28th and finished it about the 2nd; that the record doesn't state when he moved in here to drill the well; that those are approximate dates; that he doesn't remember being there on the 24th day of December, 1940, in regard to drilling [76] this well and coming back the next day after Christmas to start to drill, nor does he remember conversation about Christmas dinner and

(Testimony of George Bumgardner.)

turkey, more or less, between him and Mr. Turnbeaugh; that so far as his records are concerned and his memory as to when he actually started to drill the well, it wouldn't be four or five days off one way or the other.

Q. Surely it wasn't December the 28th, 1941, was it?      A. No, 1940.

Mr. O'Reilly: Q. So you believe, now, that you did move in there in 1940?

A. That is true, yes, it was 1940.

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FLORENCE McGIRK

called and sworn as a witness on behalf of the Bankrupts, testified as follows:

Direct Examination

By Mr. O'Reilly:

Q. Will you please state your name?

A. Florence McGirk, M-c-G-i-r-k.

Mr. Brown: G-i-r-k?      A. Yes.

Mr. O'Reilly: Q. On or about the 14th day of November, 1940, where did you reside, Mrs. McGirk?      A. At Riverbank.

Q. At Riverbank. At that time were you acquainted with Mr. and Mrs. Turnbeaugh?

A. Yes.

Mr. Brown: Excuse me, Mr. O'Reilly. What date did you mention then?

Mr. O'Reilly: November 14th, 1940.

(Testimony of Florence McGirk.)

Mr. O'Reilly: Q. How long had you known them prior to that time?

A. Well, I have known them since 1929.

Q. 1929. And from 1929 on until November 14th, 1940, had you [77] visited in their home?

A. Very frequently. We happened to be neighbors practically all of those years.

Q. Oh, I see. Neighbors where?

A. Well, Escalon, and in Artesia, Southern California, and in Williams in Northern California.

Q. Now, did you visit with the Turnbeaugh's on or about the 14th day of November, 1940?

A. Yes, I did.

Q. And where?

A. Well, we went to Ripon to their previous residence on the Murphy Ferry Road and they were not there, Mr. and Mrs. Turnbeaugh were not home, and the children told us where they were, and it was in this new place they were constructing. And so we went from that residence to the new place.

Q. And did you have a conversation with Mr. or Mrs. Turnbeaugh there at the time?

A. Both of them.

Q. You talked to both of them. What time of the day was it, if you remember?

A. I should think it was between 7:00 and 8:00 in the evening.

Q. In the evening? A. Yes.

Q. And where were they at that time?

A. They had built a garage, and for the first time were going to sleep there that night.



(Testimony of Florence McGirk.)

Q. Well, how do you know?

A. Well, they had——

Q. Were they sleeping at the time?

A. No, no, they weren't sleeping at the time, but they were there and had had a bedroom set moved in and had their bed made and were ready to stay there that night. [78]

Q. And did you have a conversation with them about the building and about anything else pertaining to the building, or why you had come there?

A. That wasn't why we came there, no; we came there because—I have a birthday on the 16th of November, Mrs. Turnbeaugh has one on the 17th of November, and we had planned, as we had all the previous years, to have some kind of a party, either a dinner party or a card party or something. And the week before we had discussed where we would have this party, and so we didn't decide on anything definite, and we said we would drive over in the middle of the week and decide it. So that was why we happened to go on Thursday evening, November 14th.

Q. Thursday evening, November 14th. And you discussed, I presume, your birthday party?

A. Our birthday party, and decided that they would come to Riverbank because they were not very well settled there in the garage.

Q. And did they come?

A. Yes, they did.

Q. And that was the following Sunday, was it, or Saturday?

A. Saturday night.



(Testimony of Florence McGirk.)

Q. Saturday night? A. My birthday.

Q. I see. Now, what did you observe with reference to the furniture in the garage? It is quite awhile to remember.

A. All I remember was we were quite surprised that they were there that soon. They had purchased a bedroom set, they said, in Modesto—I don't know where they got it, but anyhow it was there. It had been set up that day, they said, and I think there was some kind of a stove, but I don't know what kind.

Q. A coal oil or wood?

A. I don't remember. [79]

Q. You don't remember. Did they have lights there, on? I presume it was about dark that time of evening?

A. They didn't have the electric lights.

Q. Did they have any lights there?

A. They had some kind of a coal oil light, but I don't know what type of light. But I know it wasn't electricity.

Q. Now, did you have a conversation with them about living there at that time?

Mr. Snyder: Purely a self-serving declaration.

Mr. O'Reilly: Very well.

The Witness: Pardon me?

Mr. O'Reilly: Does the court sustain the objection?

Mr. Brown: No objection, Your Honor.

Mr. Snyder: I will withdraw it.

(Testimony of Florence McGirk.)

Mr. O'Reilly: Q: Did you have a conversation with them about living there in those quarters at the time?

A. Well, all that I remember was that they told us the previous week that they intended to start building as soon as possible, and that we were a little surprised that they were living there that soon. That is all I remember about it.

Q. That is all you remember.

Mr. O'Reilly: I believe that is all.

### Cross Examination

By Mr. Brown: Q. Mrs. McGirk, are you related to Mr. or Mrs. Turnbeaugh:

A. No, I am not.

Q. I understand that you lived at the same place they lived in three different cities?

A. Yes, we have.

Q. Is that what you said? A. Yes, I did.

Q. Pardon me for asking this, but there is no other way of [80] knowing: are you a widow?

A. No, I am not.

Q. And what does your husband do?

A. Right now he is working for Pollock, in the shipyards.

Q. What was he doing?

A. He was in the oil construction work at that time.

Q. And what was Mr. Turnbeaugh doing?

A. Doing then?

Q. Yes. A. Painting.

(Testimony of Florence McGirk.)

Q. And did Mr Turnbeaugh and Mr. McGirk ever work together?

A. No, I don't believe so.

Q. Did your husband ever work for him?

A. No, not that I remember of.

Q. Has he ever worked for your husband?

A. No, I don't think so. Their work is two different things.

Q. And I understand when they lived—Where did they live down south?

A. They lived at Artesia.

Q. And you lived there?

A. We lived in Artesia and my husband was working in Santa Fe Springs in the oil wells.

Q. And then when they lived in the next place—where was that?

A. At Williams, I believe.

Q. Then you went to Williams? A. Yes.

Q. And when they moved to Escalon, you moved to Escalon? A. Yes, we moved to Escalon.

Q. What was that, accidentally or by design?

A. No, it was just accidentally.

Q. Every time they went to each one of these three places, you were there? [81]

A. When we were at Williams Mr. McGirk was working on a wildcat well in Williams, and Mr. Turnbeaugh came up there looking for paint work and found it was a very good field, and stayed. And then they moved to Escalon first, and then there was a wildcat, as you remember, out at Oakdale and my husband was on that well for some time.

(Testimony of Florence McGirk.)

Q. Well, it just so happens that over the past ten years, since 1929—that is fourteen years.

A. Yes.

Q. You have lived in the same place they have lived?

A. We have been close enough that we visited all those years, yes, sir.

A. All those years. Are you a creditor of Mr. Turnbeaugh?

A. Creditor?

Q. Yes.

A. No, sir.

Q. Are they a creditor of yours?

A. No.

Q. And you are not related?

A. Not related.

Q. Do you keep a diary, Mrs. McGirk?

A. No, I don't.

Q. Tell us what you saw the first time you went out to this place, this new place that was built. What was it, a shed?

A. I wouldn't call it a shed.

Q. What would you call it?

A. I thought it was quite a nice looking building for a garage.

Q. Who told you it was a garage?

A. Well, they said it was to be their garage when the house was finished.

Q. Did it have sliding doors on it?

A. I don't know whether a sliding door or up-lift. [82]

Q. Was it an uplift door?

A. I don't know.

Q. What kind of a door was it?

(Testimony of Florence McGirk.)

A. There was a door that opened into another room, as I remember.

Q. There was a door that opened into a room. Where, if you were going to bring a car in, would you bring it in that place?

A. Well, there is a garage door there, yes.

Q. What kind of a door?

A. I said I don't know.

Q. Did you see the door?

Mr. O'Reilly: Just a minute. She said she didn't know what kind of a door.

Mr. Brown: Q. You were there?

A. Yes, I was there.

Q. Tell us what you saw.

A. Well, there is another door, as I remember, that comes in from the kitchen that we used, I believe.

Q. They couldn't get a car through that, could they? A. No.

Q. Well, where would you get the car through to put it in the garage?

Mr. O'Reilly: Just a minute, if the Court please. All this is argumentative, and we object upon that ground.

Mr. Brown: No.

Mr. Brown: Q. Where would you get a car in?

The Referee: Apparently the garage has two doors, one door in the kitchen-to-be and the——

The Witness: The other was the garage door.

The Referee (Continuing): ——garage door for the car to go in. I don't know as that is material.



(Testimony of Florence McGirk.)

Mr. Brown: I beg your pardon—it is my fault—did Your [83] Honor rule on the objection?

The Referee: Well, I don't really think it is material.

Mr. Brown: Q. Then how many windows were there in the garage?

A. I believe there are three.

Q. Well, were there three or four?

A. I said I believe there are three.

Q. Are you sure? A. I am not sure.

Q. What kind of a roof did it have on?

A. Well, it had shingled roof.

Q. Wood shingles or composition shingles?

A. Well, I don't know what construction; I wouldn't know.

Q. What color were the shingles?

A. Well, I guess they are wood color when they are new.

Q. Well, were they? A. Why, of course.

Q. Well, is that what these were?

A. Yes.

Q. And you are certain of that, Mrs. McGirk?

A. Yes.

Q. And what color were the walls on the inside?

A. Well, just plain walls.

Q. What do you mean by plain walls?

A. I mean there was no finished walls.

Q. Was it wood or plaster? A. Wood.

Q. And were the two-by-fours sticking out inside?

(Testimony of Florence McGirk.)

A. I don't know whether two-by-fours, but some kind of beams sticking out.

Q. Were there any coverings, or ply board over them? A. No. [84]

Q. Just bare walls, then?

A. Just bare walls.

Q. What kind of a floor did they have?

A. Cement.

Q. Cement floor. Do you remember the color of the cement? A. Well, cement color.

Q. And that is a gray, you mean?

A. Yes.

Q. It wasn't a red floor?

A. No, it wasn't a red floor.

Q. And then how was the inside of the room: did it have a square ceiling or did it have a gabled ceiling, if you know, a pointed ceiling?

A. I have never known what is a gabled ceiling. If you will explain it, I will try to answer you.

Q. Well, what kind of a roof did it have on, a shed roof or did it have a peaked roof?

A. Well, I think it has a peaked roof, this way, and a peaked roof, the other way.

Q. Oh, it was a sort of a square, peaked roof?

A. I believe that is the way it is.

Q. And what was the size of the room, Mrs. McGirk? A. The size?

Q. Yes, about.

A. Oh, it was a very large room.

Q. Big enough for about six cars?

A. Oh no.

(Testimony of Florence McGirk.)

Q. How many cars? A. Two, I should say.

Q. Two. Well, how big would you say it was?

A. I should think about thirty by eighteen.

Q. You have been in there a lot of times since, haven't you? [85]

A. Yes, I have.

Q. Several times? A. Yes.

Q. What else did you see besides the bed?

A. There was a highboy.

Q. A highboy?

A. And some type of a dresser, with a mirror on it.

Q. Some type of a dresser and a mirror. And I take it that you are a housewife and you take care of your own house so you understand the management of a house, don't you, Mrs. McGirk?

A. Fairly well, I believe.

Q. Would you say that the house had ever been lived in, when you first came there?

A. No, I don't think it had been; they told us they were sleeping there for the first time that night.

Q. As a matter of fact, the only thing you know is what they told you, isn't that right?

Mr. O'Reilly: Now, if the Court please, I think that is far-fetched. This witness has testified in a straightforward manner, and such remark of counsel is improper.

Mr. Brown: That is highly respectful, Your Honor.

(Testimony of Florence McGirk.)

The Referee: I think the question should be re-framed.

Mr. Brown: I have been very respectful here, if Your Honor please; that the only thing that she knows is what she has been told by these people.

Mr. O'Reilly: That is just as much as saying that this witness is perjuring herself.

Mr. Brown: No such thing.

The Referee: No; it is cross-examination. You have asked about the matter of their living or sleeping there, and apparently this witness doesn't know whether they were sleeping there. [86]

Mr. Brown: That is correct. That is the purpose of the question.

The Referee: Proceed.

Mr. Brown: Q. Now, Mrs. McGirk, you couldn't tell when you got there whether the house ever had been slept in, could you?

A. Why no, I couldn't.

Q. Of course you couldn't. And the only way you knew that they were going to sleep there was because somebody told you that, isn't that true?

A. Well, not exactly, because they had had their bed delivered and had made up the bed, they had their bedding there and were ready to sleep there.

Q. How many bedrooms have you?

A. Right now——

Mr. O'Reilly: If the Court please——

Mr. Brown: Withdraw that.

The Referee: Yes, I think so.

(Testimony of Florence McGirk.)

Mr. Brown: Q. You didn't see anybody sleeping in the house, did you?

A. No, I didn't.

Q. You never saw anybody sleep in that room, did you? A. Oh yes, I did.

Q. You mean long afterwards?

A. I have seen them sleeping there, yes.

Q. Lately, you mean?

A. No, not lately.

Q. Well, when did you first see anybody in bed in that house?

A. I couldn't say about that, but I have seen people in bed in that house.

Q. Just about when?

A. I don't know about that, but it was before they moved into the other house; it would be, I should think, in November, at [87] least, of that year.

Q. In November of that year you saw people sleep there? A. Yes.

Q. Who did you see sleeping there?

A. Well, her little girls had the flu one time, we were over there—that I recollect particularly, about that—they were in bed there.

Q. When did they give up the Gagas house?

A. I don't know that.

Q. When did you see them last in the Gagas house?

A. I don't think that we were ever over there again.

Q. You were never over there again?



(Testimony of Florence McGirk.)

A. No, I don't believe so.

Q. Do you know when they moved away from the Gagas house?

A. I know about when they moved away.

Q. When?

A. I should say the early part of 1941.

Q. The month of January, February, March or April?

A. I should think the latter part of January.

Q. The latter part of January. Are you sure of that?      A. Well, I am quite sure.

Q. Now, Mrs. McGirk, this is intended in the highest respect, so don't take this as a personal issue, this is purely a legal matter; what toilet facilities were in this garage that you saw?

A. There was a toilet in the garage. I don't think it was there the first time I was there, though.

Q. When did you first see the toilet in the garage?

A. Well, during some of our next visits there, but I don't know just whether I can give you the dates.

Q. Was it after or before February of 1941?

A. I couldn't say.

Q. And you didn't see one there the first time? [88]

A. No, I don't think it was there the first time.

Q. Did you see any pots or pans or dishes the first time you were there?

A. We were only in this part where the bed was, and I don't—All I remember is the bed and

(Testimony of Florence McGirk.)

the stove and the things that I have mentioned.

Q. At that time was there or was there not any water connections in the place?

A. I didn't see any; I don't know.

Q. Were there any toilet facilities there at that time?

A. I don't know. We were only there about an hour that evening.

Mr. Brown: That is all, Your Honor.

The Referee: Well, the court would like to ask a few questions.

Mr. Brown: Yes.

The Referee: Q. You say you saw the little girls in bed? A. Yes.

Q. With the flu?

A. Well, they were sick; I don't know whether it was the flu or not.

Q. Well, were they in bed?

A. Yes, they were.

Q. And about when was that?

A. Well, I would say the latter part of November.

Q. You mean November of 1940? A. Yes.

Q. Just shortly after you were there?

A. Yes; yes.

Q. Let me ask you this: How close was this garage to a highway?

A. Well, I don't know whether you call the street in front of the house the highway, or the 99 Highway. There is a street in [89] front of the house.

(Testimony of Florence McGirk.)

Q. A street in front of the house. I see.

A. It is called Murphys Ferry Road, I believe.

Q. Is that a street or a road, county road?

A. I think it is a county road.

Q. County road. And how far is it from that to the garage, the place that you went to on that night?

A. Oh, I suppose it sets back 60 or 70 feet.

Q. Did you drive in? A. Yes, we drove in.

Q. Was there any graveled drive?

A. Well, that is very sandy soil in there. No, I don't think so.

Q. What kind of a night was it?

A. It was clear; it wasn't a rainy night.

Q. A clear night? A. Yes.

Q. No rain? A. I don't believe so.

Q. No fog?

A. Probably; might have been a fog, but I don't remember about that.

Mr. O'Reilly: Are you through, Your Honor?

The Referee: Yes.

Mr. O'Reilly: That is all, Mrs. McGirk. Thank you.

Mr. Brown: Your Honor, May I, with Your Honor's permission, admonish the witnesses who testified not to discuss the matter with any other witness? I mean, this happens to be important.

The Referee: Yes, it may be so ordered.

MRS. CLARICE THIEMANN

called and sworn as a witness on behalf of the Bankrupts, [90] testified as follows:

The Referee: And what is your name, please?

A. Clarice Thiemann, T-h-i-e-m-a-n-n.

Mr. O'Reilly: Q. Where do you live Mrs. Thiemann?

A. I live in Ripon, on the Murphy Ferry Road.

Q. And do you know Mr. and Mrs. Turnbeaugh?

A. I do.

Q. And do you know where they live at the present time? A. They are neighbors of mine.

Q. They are neighbors of yours. When you say they are neighbors of yours, you mean that the house they are now living in? A. Yes.

Q. How far from the house that they are now living in do you live?

A. I live—they are the third acre from us.

Q. Third acre. Well, in feet, how many feet would that be? A. It is about 400 feet.

Q. About 400 feet? A. Yes.

Q. Any obstructions between your house and their house? A. There is now.

Q. Was there then?

A. No. When they built there was nothing.

Q. Now had you known the Turnbeaugh's prior to November 14th, 1940?

A. I didn't know Mr. and Mrs.; I knew the boys. But I didn't know who they were until I saw them start to build.

(Testimony of Mrs. Clarice Thiemann.)

Q. What was the first thing that you saw on the place that occurred to you that they were building?

A. Well, a tent went up and some lumber was brought.

Q. Do you know on what date the tent went up, approximately?

A. It was before the first of November; the latter part of [91] October.

Q. The latter part of October?

A. Yes.

Q. And I believe you stated that up to that time that you hadn't known them?

A. No, I didn't know them.

Q. Or were you acquainted with any of the Turnbeaugh family? A. No.

Q. That is, on speaking terms with them?

A. No.

Q. Now, did you observe the building of the garage? A. I did.

Q. And prior to that time there was nothing on the property except these tents and the lumber that you speak of? A. Yes.

Q. Do you know, Mrs. Thiemann, approximately the date of the building of that garage?

Mr. Snyder: You mean the completion, John?

Mr. O'Reilly: Q. The date when they started to begin.

A. It must have been about the first of November, because that was when we had built, a year



(Testimony of Mrs. Clarice Thiemann.)

previous, and I thought they were very foolish to build so late, because I know we were.

Q. Now, do you know on or about what date the garage was completed? I am not holding you down to any specific date unless you know, Mrs. Thiemann.

A. When it was actually completed? It must have been shortly after Thanksgiving — I mean, Armistice Day.

Q. Well, how do you place that date?

A. Well, during November—I know before Thanksgiving there used to be lights in there, and a car; they must have been living there, and it must have been finished. I know the tent wasn't up very long. And it was cold then, and they were in there. [92]

Q. Well, did you visit them in their garage quarters?

A. I did the latter part of November. I collect for the Red Cross roll call, and it begins after Armistice Day.

Q. Did you visit them on that occasion?

A. I called at the door and she invited me in, but I was collecting, and her husband wasn't there and she had no money for me, and I went on.

Q. Did you observe the condition of the garage?

A. Well, it looked very crowded; I felt embarrassed to go in, to accept the invitation.

Q. Well, you say it was crowded. In what manner?

(Testimony of Mrs. Clarice Thiemann.)

A. Well, the furniture in there. They were living in there.

Q. Was there a bed there?

A. Well, I wouldn't swear exactly there was a bed; you glance in at a door. It was full of furniture.

Q. Now, prior to that time that you say you went there for the purpose of collecting for the Red Cross, did you observe any lights there evenings?

A. Yes, my breakfast nook had no shades on it at the time and our one window faces north and one faces east, which was their direction, and I could see lights there in the evening when we were eating. They had one window, small window. And in the morning, why, sometimes there would be a light; it was dark at seven o'clock in the morning. And there was a car there.

Q. Now, before that, prior to that time did you observe the boys or any of the family living in the tent?

Mr. Snyder: Let's get some times fixed. We object to it upon the ground it is indefinite.

Mr. O'Reilly: Well, she said that she believed the tent was there.

Mr. O'Reilly: Q. On what date, about what time?

A. It must have been around October 26th or so. During the [93] last week.

Q. Well, between October 26th and in November, well, we will say Armistice Day, which usually

(Testimony of Mrs. Clarice Thiemann.)

falls on the 11th, did you observe any members of the family living there in the tent?

A. Yes, I knew there was some. The boys were in the tent, because I have a boy and he wanders around and he knew that they were there, someone was there.

Mr. Snyder: Just a second. That would be obviously hearsay.

Mr. O'Reilly: That may go out, of course.

The Referee: It may stand out.

A. They had lumber there, and when we built we had windows stolen from our house, and the other neighbors had lumber taken from their place, and I just figured that they were guarding the lumber was why they were living there.

Mr. Snyder: We ask that go out.

The Referee: It may stand out.

Mr. O'Reilly: Q. Did you observe them in or around the tent in the daytime or evening?

A. The boys used to be there real early in the morning. They went to school, though.

Q. Did you observe any lights in the tent?

A. Yes, they had some lights in the tent.

Q. They did.

Mr. O'Reilly: You may cross-examine.

#### Cross-Examination

By Mr. Snyder: Q. You can't recall any of these dates particularly, can you, Mrs. Thiemann?

A. Well, I can November 1st, because that is when we built, a year previous.

(Testimony of Mrs. Clarice Thiemann.)

Q. And because you built a year previous you feel that they were building at about the same time? [94]

A. They were building—yes, they had started at the same time.

Q. And merely because you built then your recollection is refreshed by that fact, is that correct?

A. Yes.

Q. Now, Mrs. Thiemann, once you mentioned that you went around Thanksgiving, and the next time you said around Armistice Day. Do you recall when it was that you went over there?

A. For the roll call?

Q. Yes, Red Cross.

A. Well, the roll call begins after November 11th, and so it was between then and the end of November that I went.

Q. You can't give us any date more definitely than that?

A. No, because when you have four or five miles to go, you take time out when you have it.

Q. In other words, you don't want us to believe that these things you are testifying to existed there on November 14th or 15th, do you?

A. Well, it could have; I have no definite—

Q. But you are not so testifying, are you? In other words, you don't know, do you?

Mr. O'Reilly: Just a minute now. I think, if the court please, she has been explicit.

The Referee: Well, this is cross-examination.

(Testimony of Mrs. Clarice Thiemann.)

Mr. O'Reilly: The question is: "Do you want us to believe"?

The Referee: Well, it is not necessary to have any argument. Counsel is entitled to ask the question; let him ask it.

Mr. Snyder: Q. How long did it take them to build the garage?

A. I would say about three weeks.

Q. About three weeks? [95] A. Yes.

Q. Did you see them doing the work about the place? A. Yes.

Q. Was it just Mr. Turnbeaugh or did the boys work with him?

A. Well, it was Mr. and Mrs., and a few days there were other people there. But I noticed her in particular.

Q. Working about the place?

A. Yes.

Q. Now, these lights that you saw: Could you tell whether they were electric lights or not?

A. No.

Q. You don't know.

A. Yes, it wasn't electric lights; it wasn't bright enough.

Q. Wasn't an electric light? A. No.

Q. Do you remember when they lived at Gagas'? Do you live on that same side from where they live now? A. Yes.

Q. Do you remember when they lived in Gagas'?

A. Well, Gagas' is around the corner. We can't see them, but I knew.



(Testimony of Mrs. Clarice Thiemann.)

Q. Mr. Turnbeaugh said that they lived there until about February of 1941. Would you, from your watching them, say that they moved out of Gagas' around February of 1941?

A. Well, I think the children came, the small girls came about then. But I took it for granted that Mr. and Mrs. were living there all the time.

Q. But you don't know. In other words, what I am asking for, you recall the children living on the premises around February, 1941?

A. That the small children came there all the time. Naturally they had been there during the day-time, and then they seemed to [96] disappear.

Q. Mrs. Thiemann, have you discussed this with anyone at all?

A. What do you mean? With my husband.

Q. Your testimony here in court?

A. With my husband.

Q. These dates and things. With no one else but your husband? A. That is all.

Q. No one else at all? A. No.

Q. How did you happen to come up here today, did Mr. and Mrs. Turnbeaugh ask you to come?

A. Mr. Turnbeaugh asked my husband, and he asked me. Mr. Turnbeaugh has never asked me.

Q. And your husband and you discussed this, these dates, is that correct? A. Yes.

Q. When did you have this discussion?

A. Oh, it must have been about a week ago, I guess.

(Testimony of Mrs. Clarice Thiemann.)

Q. And what was that discussion that you and your husband had?

A. Well, he asked me if I remembered them building.

Q. Yes.

A. And I said yes it was the same time that we had started to build, and I thought they were crazy.

Q. Do you remember when their house was finished?

A. Well, that must have been around in July.

Q. In July?

A. The house went up between, and they were finished May 31st, and Turnbeaugh's didn't move into the house until after that, not into their house.

Q. Do you remember when they started to build their house?

A. I think it was around in January.

Q. In January? [97]

A. That they laid the foundation.

Q. Now, you say you went up to this door and knocked? A. Yes.

Q. Do you remember which way the door opened, did it open into the garage or out from the garage?

A. It opened this way.

Q. Would that be into the garage?

A. Out.

Q. Out. And did you get a clear view of all the inside of the garage?

A. I did over that way. (Indicating.)

Q. That would be——

(Testimony of Mrs. Clarice Thiemann.)

A. One side of the door was closed. It was a double door and one side was closed.

Q. It was a double sliding door?

A. No, it was a door that opens out—two doors that open out.

Q. Oh, it wasn't the door that cars go into?

A. Yes.

Q. It was the big door?

A. Well, it is two doors that open this way.

Q. But it was the entrance where the car would go in, is that right?      A. Yes.

Q. Did you see any electric range in there then?

A. No.

Q. You don't recall seeing an electric range?

A. No.

Q. Would you say it was not there?

A. No, I wouldn't say that, either. I didn't see.

Q. You didn't see.

A. I saw what looked like chairs and maybe a bed and furniture, more of that type. [98]

Q. You are not sure about the bed?

Q. Well, I would almost swear it was a bed, but I——

Q. Did you see a pressure system in there, a tank for a pressure system?

A. I think the pressure system is on the outside.

Q. Was it there at that time?      A. No.

Q. It was there later?

(Testimony of Mrs. Clarice Thiemann.)

A. Uh-huh. They had to build an addition to put that in.

Q. Now, this bed, could you describe it to us at all?      A. No.

Q. You can't describe it to us?      A. No.

Q. And outside of the bed, the only things you recall are some chairs?

A. I think there was a chesterfield.

Q. You think there was a chesterfield?

A. Yes. I glanced in. I didn't stand and look.

Q. I appreciate that.

A. As she opened the door, she invited me, and I glanced in, you see a crowded room and——

Q. Did you see any stove of any sort?

A. Well, when I glanced in, I didn't picture what was there; I just saw it was crowded with furniture.

Q. Did you see any lumber piled up?

A. Not inside.

Q. Was there some lumber piled outside?

A. Well, I think there was only a few scraps left from building the garage.

Q. Just a few scraps.

Mr. Snyder: That is all.

Mr. O'Reilly: That is all. [99]

## CLEM V. MULHOLLAND,

called and sworn as a witness on behalf of the Bankrupts, testified as follows:

The Referee: And what is your full name?

A. Clem V. Mulholland. C-l-e-m.

Mr. O'Reilly: Q. Mrs. Mulholland, do you know the Turnbeaugh's? A. Yes, sir.

Q. Where do you reside, Mrs. Mulholland?

A. In Ripon, sir.

Q. In Ripon?

A. Yes. Well, it is not in town, it is on a little road outside of Ripon.

Q. And where did you reside on or about the 14th of November, 1940? A. Same place.

Q. Same place. Did you know the Turnbeaugh's at that time? A. Yes, sir.

Q. How long have you known them?

A. About four years.

Q. About four years? A. Yes.

Q. Now, did you visit their house at any time?

A. Yes, a number of times.

Q. Did you visit with them when they were living in the house at Ripon?

A. You mean—which house?

Q. The Gagas.

A. That's right, yes, sir, I did.

Q. You did? A. Yes.

Q. And did you subsequently visit with them in their garage [100] quarters?

A. I had occasion to go there.



(Testimony of Clem V. Mulholland.)

Q. In what year? A. In the year 1940.

Q. 1940. Do you know the month?

A. It was about this time of the year; in November. A little earlier than this.

Q. A little earlier than——

A. This is December. This is December, isn't it? Yes. It was in November.

Q. On what day in November did you first visit the Turnbeaugh's in 1940, if you know?

A. The first day? Well, I couldn't say exactly the first day, but I was there a number of times.

Q. Well, let me ask you this: Were you there at any time during the time that a garage was being built? A. Yes, sir.

Q. And were you there after it was built and completed? A. Yes, sir.

Q. Now, when is the first time that you visited the Turnbeaugh's during the time that the garage was being built?

A. Well, the first time was at night; I had occasion to go there to deliver a message to him to come to the telephone. It was, I imagine about 9:00 o'clock.

Q. In the evening? A. In the evening.

Q. Can you approximately fix the date or the day of it?

A. Well, it was before Thanksgiving of that year, and that was the new—so-called new Thanksgiving, which would have been the third Thursday in November, and it was prior to that.

Q. How many days prior was it?

(Testimony of Clem V. Mulholland.)

A. Well, it was over a week. [101]

Q. Over a week prior to that?

A. About a week before that, yes, sir.

Q. I don't know what that Thanksgiving was on that year; on the 23rd, wasn't it?

A. No, I think it was the 21st.

Q. Twenty-first?

A. I'll have to look at a calendar. It was not the old original Thanksgiving; it was the so-called new Thanksgiving, the third Thursday.

Q. And you say on the occasion of your going there at that time you delivered a telephone message?

A. To call Mr. Turnbeaugh to the telephone. He often gave our number; in fact, the call was from his son, and his son always calls our number to get him.

Q. Now, who was there when you visited them or went there?

A. Mrs. Turnbeaugh was there.

Q. And what were they doing, if anything?

A. Well, I guess they were in bed; it was dark.

Mr. Brown: Now, we ask that that go out, if Your Honor please, on the ground——

The Witness: It was dark. I mean, they were in the building because I had to knock on the door. I tooted the horn and Mr. Turnbeaugh turned on the light, some sort of a lamp; I presume it wasn't a very good lamp from what I could gather, and I told him that they were wanted on the phone. So then I went back home, and then, or, in 15 or

(Testimony of Clem V. Mulholland.)

20 minutes he came to talk. I told the operator it would take about 20 minutes to get them. That is about the length of time. I don't know how far it is from there; it is a mile, I guess, or a mile and a half.

Q. Did Mr. Turnbeaugh talk to you at that time?      A. Yes, sir.

Q. And did he say that he would come? [102]

A. As soon as he got dressed. They were in bed. The light was out and they had to light a light, and he said as soon as he got dressed he would come to the phone.

Q. Now, you say you visited with them or went there on a similar purpose at a later date?

A. Oh, I went there a number of times.

Q. Oh, you did. Did you at any time go inside the garage quarters during the year 1940?

A. Yes.

Q. During the month of November?

A. Yes.

Q. Can you place the date?

A. Oh, I couldn't place the exact date.

Q. Well, how soon after the first time that you went there, that you called there for Mr. Turnbeaugh?

A. Well, I had been there a number of times before the phone call; I had occasion to go by that road and while the garage was being built I was there, when they were laying—they had a cement floor in it. I stopped there a number of times.

(Testimony of Clem V. Mulholland.)

Q. When was the first time, approximately, that you were inside of the garage?

Mr. Brown: She has already testified that she doesn't know the date.

The Witness: Not the exact date, but it was in the month of November. And the phone call that particular night—now, I wasn't in the building, you understand, that night; I knocked on the door and they answered.

Mr. O'Reilly: Q. That's right.

A. Mr. Turnbeaugh answered me.

Q. Now, the next time you were in the garage, then what did you observe with reference to the garage and furnishings on the inside? [103]

A. They *had bed*.

Mr. Brown: When, that is what time, if the Court please? The next time from when?

Mr. O'Reilly: Is this the first time you were there, after the phone call?

A. First time after the phone call.

Q. That you are now talking about, that you went inside?

A. There could have been another phone call in between there.

Q. I am asking you, Mrs. Mulholland, when was the first time that you were on the inside?

A. If I got the first phone call the week before Thanksgiving it must have been Thanksgiving week then that I was in the building.

Q. All right. Now, what did you observe when you were there on that occasion?

(Testimony of Clem V. Mulholland.)

A. Well, there was a bed there and they had a sort of a rug or something over their cement floors. It was built for a garage, and there was a cement floor on it.

Q. Yes.

A. And some kind of a stove, heating apparatus; but they had no electricity, they had a coal oil lamp.

Q. Now, before this phone call that you have testified to, did you observe any other buildings or structures on the lot?

A. Before? Well, it was sort of a little lean-to, as I remember it, against that garage. I think they build a lean-to first, or the boys had a tent there.

Q. That is what I am trying to get at: was there a tent there?      A. A tent was made first.

Q. Did you see anybody in and around that tent, or living there?

A. Well, they told me that the boys had lived there.

Q. Just a second.

Mr. O'Reilly: That may go out. [104]

The Witness: No, I couldn't say that I saw the boys in the tent.

Mr. O'Reilly: All you saw was the tent?

A. Yes, the tent was there. I was never there when the boys were in it, really.

Mr. O'Reilly: I believe that is all.



(Testimony of Clem V. Mulholland.)

Cross Examination

By Mr. Brown: Q. Mrs. Mulholland, outside of raising six daughters and running a sales yard and two or three other businesses, do you have a record of all the phone calls that you answer down there?

A. Mr. Brown, I did have, but unfortunately they were burned.

Q. The records are burned?

A. The telephone bills.

Q. You were in the habit——

A. For two years.

Mr. O'Reilly: Let her complete.

A. For two years, Mr. Brown, I attempt to keep them, and I have a record of a year ago, and I was confident I had had the two years records, but I couldn't find them.

Mr. Brown: Q. But these records are gone?

A. They are.

Q. I see. A. But the phone call was placed.

Q. But you are still raising six daughters?

A. Yes.

Q. And still running the sales yard?

A. Yes.

Q. And you are still a very busy lady?

A. Yes; but I still take messages for the neighbors.

Q. You still take messages for the neighbors. And you have a little red book there, as I remember, that you hang on the wall, [105] alongside of the telephone; whenever you get a call you write it in that book? A. No, sir.

(Testimony of Clem V. Mulholland.)

Q. What is the color of the book that you have got?  
A. There is no book.

Q. There is no book. All right. Now, do you really know, Mrs. Mulholland, the date that you got that first phone call to the Turnbeaugh's?

A. Well, Mr. Brown, I am confident, I am positive it was before that Thanksgiving.

Q. Now, which Thanksgiving?

A. The third Thursday in November, which was the Thanksgiving of two years ago.

Q. Are you confident that that is the Thanksgiving Day two years ago?

A. That was the date, yes, sir.

Q. Two years ago?

A. Two years ago. They moved Thanksgiving up.

Q. Well——

Mr. O'Reilly: Just a minute, let her finish her answer, Mr. Brown, please.

A. You see, they moved Thanksgiving up one week, you understand that.

Mr. Brown: Q. I think I do.

A. I think so.

Q. And then you had the phone call?

A. Yes, sir.

Q. And the day of the month that was, you don't know. Of course, you don't know.

A. Basing it on the Thanksgiving, which I have one particular item that I do recall definitely—the Saturday after that Thanksgiving. [106]

Q. You remember that call?

(Testimony of Clem V. Mulholland.)

A. No, no, I remember something pertaining to that. Would you want me to tell you?

Mr. O'Reilly: Yes, you tell him.

Mr. Brown: Q. Yes, you tell anything.

A. I stopped at Turnbeaugh's house——

Q. The Saturday after Thanksgiving?

A. That's right. And Mrs. Turnbeaugh's people——

Q. That is what you do remember, isn't it?

Mr. O'Reilly: If the court please, I object to Mr. Brown interfering with the witness; let her tell her story.

The Referee: Well, let's have it by question and answer.

Mr. O'Reilly: He is interrupting, I meant to say.

The Referee: Has there been any question?

Mr. Brown: Q. The first time you remember, Mrs. Mulholland, is the Saturday after the Thanksgiving, isn't that right?

A. No, I remember the other.

Q. Well, how many days was it before that time? A. It was a week.

Q. How do you know that it was a week?

A. Well, I know it was before that Thanksgiving, Mr. Brown.

Q. Well, how do you know how long it was before?

A. Well, it was not too far because I discussed that call.

(Testimony of Clem V. Mulholland.)

Q. How do you know it wasn't four days before Thanksgiving?

A. It was before Thanksgiving.

Q. Well, you are guessing, aren't you, Mrs. Mulholland?

A. No, sir.

Q. You are not guessing? A. No. [107]

Q. Do you know what day it was?

A. Yes.

Q. Well, just exactly how many days before Thanksgiving was it that you got a call?

A. A week.

Q. Seven days? A. Yes.

Q. And what time of the day was it?

A. It was about nine o'clock at night.

Q. You are a friend of Turnbeaugh's, aren't you?

A. Just merely—they were neighbors at one time.

Q. And you are still very friendly?

A. Not too friendly.

Q. You are trying to help the Turnbeaugh's, aren't you, Mrs. Mulholland?

A. Not any more than I would help anyone else.

Q. But you don't really and truly know the exact time that it was that you first got that phone call, do you?

A. It was previous to Thanksgiving.

Q. How long, you don't know?

A. Not over a week.

Q. Not over a week? A. No.

(Testimony of Clem V. Mulholland.)

Q. Well, how much under a week was it?

A. Well, I don't think it was under a week. I am basing it that it was that Friday night after the sale, because I hadn't yet gone to bed, and I usually go to bed before that time, and that call was around 9:00 o'clock, and I would have been up on a Friday night.

Q. And where were they living at that time, where was their principal place of residence?

A. Their principal place was about a mile and a half or maybe [108] two up the road, I don't know.

Q. Well, which was their principal home?

A. Where their youngsters were and where they had rented for so many months.

Q. Was that known as the Gagas house?

A. That's right.

Q. And that is where they lived?

A. And that is where they—and I supposed they were there, I went there first.

Q. You went there?

A. I went there first.

Q. And who told you to go to the other place?

A. The boy, Harley; went to the door and he said "The folks are staying down at the other place."

Q. He told you that?

A. He told me that. And then I go to the other place, which was nearer to Ripon.

Q. Then did you go into the other place?

A. I tooted the horn and then made a racket



(Testimony of Clem V. Mulholland.)

so that they could hear me, because it was all dark around there.

Q. And you went in. And what did you see? What did you see when you got there?

A. I didn't see anything; it was 9:00 o'clock at night, it was dark.

Q. It was all dark? A. It was all dark.

Q. There were no lights? A. No lights.

Q. And you tooted your horn?

A. That's right.

Q. And after you tooted your horn what happened?

A. Mrs. Turnbeaugh hollered and asked who it was. [109]

Q. And you told her "Clem Mulholland"?

A. I said, "There is a phone call for Mr. Turnbeaugh." It wasn't a message, it was a person-to-person; he had to come answer it.

Q. They shouted from the inside, "We're in bed, we can't come out," is that it?

A. "As soon as I get up and get dressed, I'll come over."

Q. Do you remember those words?

A. Words to that effect.

Q. Just those exact words? A. No.

Q. Aren't you guessing these things, Mrs. Mulholland? A. No.

Q. Did they say "When we get dressed"?

A. "As soon as he gets up."

Q. As soon as he gets up. A. Yes.

(Testimony of Clem V. Mulholland.)

Q. You remember those literal words?

A. Well, to that effect.

Q. What do you mean, to that effect?

A. That he meant as soon as he got up he would answer the phone.

Q. What did he say that made you believe that?

A. Why, I naturally went home and turned on the light for him to come over to take the message.

Q. Then you drove on?           A. I went home.

Q. And they didn't use those words at all, did they?

A. I can't say what words they used, Mr. Brown. He said he would come there to answer the phone.

Q. He said he would come there to answer the phone?           A. Yes.

Q. Did he tell you whether he would come from the other house or this house? [110]

A. No, he wasn't at the other house.

Q. Did he answer you, or did she answer you?

A. Well, he must have been there; she couldn't have walked to the other house.

Q. Who answered you?

A. She answered me.

Q. Did he answer you?

A. Well, I wouldn't swear to that.

Q. Well, was he there or wasn't he there?

A. Well, I had every reason to think he was there; she said as soon as he got dressed.

Q. Did you see him there?           A. No.

Q. Did he talk to you from in there?

A. No.

(Testimony of Clem V. Mulholland.)

Q. Then you are guessing that he was in there, aren't you?

A. I am supposing that he was there.

Q. You are supposing. And you are supposing that you went there at that time, aren't you?

A. No, sir, I am not; I am definitely positive.

Q. You know you went there?

A. I am certain of it.

Q. But you don't know when you went there?

A. I went there the week before Thanksgiving.

The Referee: Q. Where was that call from?

A. That call was from Oakland.

Q. Oakland?

A. And when I started——

The Referee: Well, that is a matter of proof.

Mr. O'Reilly: What did you start to prove?

The Referee: The telephone company would have a record of that. [111]

Mr. Brown: Yes, they will have.

The Referee: No use taking up a lot of time.

Mr. Brown: Q. Was it a collect call or a pre-paid call?

A. Usually, that particular son, sent them collect.

Q. Well, was that call a collect call?

A. I haven't been able to find that out. If there was a collect call it would be charged to our account; if it was a pay phone down there they would have no record of it in **Ripon**.

Q. Thank you. That is important, whether it is collect or prepaid.

(Testimony of Clem V. Mulholland.)

A. It is, Nat—Or Mr. Brown.

Q. Why don't you remember that?

A. Well, every other call the boy put in was collect; I guess that was, too.

Q. Well, was it or wasn't it?

A. I couldn't say.

Q. Are you guessing about it? A. No, sir.

Q. Now, when he came back, did he come over while you were there? A. Mr. Turnbeaugh?

Q. Yes. A. Yes, he did.

Q. And what did he say to this man?

A. As I recall it, it was about material. His son was——

Q. Who was he talking to? A. His son.

Q. His son. Now, tell us what he said to his son, two years ago.

A. I couldn't do that.

Q. Well, you can remember everything else.

A. Oh, no. [112]

Q. Why?

A. I can definitely remember of going out at night and driving two miles up the road to deliver a message.

Q. Were you there when he answered the phone?

A. Yes.

Q. Did you listen?

A. Not particularly, no.

Q. You were there, right there in the room, that little room?

A. It isn't a little room; it is my kitchen.

(Testimony of Clem V. Mulholland.)

Q. In your kitchen. And he came into the kitchen and you were in the kitchen?

A. That's right.

Q. Now, tell us what he said.

A. I don't remember, but it was pertaining to paint.

Q. You don't remember that as well as you remember the day, do you?      A. Well——

Q. Do you, do you?

A. Yes, that it was about paint, because he was working for a paint company.

Q. What did he say about it?

A. Something about what material his father had ordered for a job, or something of the sort.

Q. Tell us what he said.

A. I can't tell you that.

Q. You have forgotten all about it?

A. No, I haven't forgotten all about it.

Q. Do you know anything about what he said?

Mr. O'Reilly: Just a minute. If the Court please, this is objected to as argumentative.

The Referee: Well, I think the witness has stated sufficiently. [113]

Mr. Brown: A very clever woman; she tells us what she knows.

Mr. Brown: Q. Now, do you remember anything about the conversation?

A. It was concerning material.

Q. How long did he talk?

A. Well, I guess ten or fifteen minutes.

Q. Ten or fifteen minutes?



(Testimony of Clem V. Mulholland.)

A. It was a lengthy conversation.

Q. What did he say in that conversation?

A. Well, it was all about material. I wouldn't know about that. Pertaining to gallons, I guess, and quantities.

Q. You guess? A. I guess.

Q. You guessed the whole thing, don't you?

A. No, I don't guess the whole thing.

Q. What? A. No, sir.

### Cross-Examination

By Mr. Snyder: Q. About what time was it you got there?

A. What do you mean, Mr. *Brown*?

Q. When you went over to the house to call Mr. Turnbeaugh, about what time was it?

A. Well, I am placing the time about nine because the rate for long distance I think at that time started at 8:30, so the call was after 8:30.

Q. And there was, so far as you know, no light burning and you didn't see any strange cars around the place that would indicate to you that anyone else was there?

A. Not that particular night, no.

Q. Were there any cars around there at all?

A. Turnbeaugh's car was there. [114]

Q. That is all?

A. That is the only one that I noticed.

Q. That is a Mercury?

A. That was in the headlights—you know what I mean, outside of the headlights of my own machine.

(Testimony of Clem V. Mulholland.)

Mr. Snyder: That is all, Mr. Brown.

Further Cross-Examination

By Mr. Brown: Q. Aren't you influenced by your feelings in this matter, Mrs. Mulholland?

A. No.

Q. You are quite sympathetic with these people?

A. No.

Q. On account of your own predicament?

A. No.

Q. And you are not leaning their way purposely?

A. No.

Q. And you wouldn't do that?

A. No, sir. I know the boys and all of them, Santos' and all of them.

Redirect Examination

By Mr. Reilly: Q. You know Mrs. Santos?

A. I know Mrs. Santos and the boys. The youngsters went to school with some of my girls.

Q. I believe you started to explain and Mr. Brown apparently didn't allow you to, why you distinctly remember the date in question, about a week before the Thanksgiving Day.

A. Because the Saturday following that Thanksgiving I stopped in at the so-called Gagas house, and Mrs. Turnbeaugh's people were here from the south, Long Beach or some place else, and I was visiting there with her mother. They hadn't been up there in some time. And that was the Saturday after, and I know the call was before that; in fact, as I say, there were several calls. [115]

(Testimony of Clem V. Mulholland.)

Q. This sale that you mentioned awhile ago that you didn't complete, something about a sale.

A. Friday night I stated—I don't know what date that particular Friday night was—I think it was most likely on Friday night because I was still up, and I ordinarily am in bed before then.

Q. Do you know the young man that called by long distance?           A. I have met him.

Q. Have you made any attempt to go over to the telephone company, Mrs. Hulholland, about the telephone bill?

A. I have. And Ripon stated that they are only required to keep their records six months. They had the year ago records, you see, but then they pile up on them and they have no storage place, so they told me they destroyed them. I made every effort to get them, because I was confident that it was collect and it would therefore show on my bill; otherwise there would be no way to trace it because if it was from a pay station, a little place like Ripon keeps no track of incoming calls. That is the truth, Nat.

Q. You know Mr. Brown very well?

A. Yes.

Q. In fact, you know Mr. Snyder, too?

A. Yes.

Q. And you are under subpoena now by Mr. Snyder in a case that is coming up next week?

A. Yes, sir, sometime.

Mr. O'Reilly: Well, that is all.

(Testimony of Clem V. Mulholland.)

Recross Examination

By Mr. Snyder: Q. When you say you visited them on the Saturday after Thanksgiving and Mrs. Turnbeaugh's mother was there, were they at the Gagas place? A. Yes.

Q. You talked to Mrs. Turnbeaugh, I guess over at the Gagas [116] place, then?

A. Uh-huh (Affirmative).

Q. She was there with the mother?

A. I think so.

Q. Did you have tea with them, or something?

A. No, no tea.

Q. Was it in the afternoon?

A. Well, to make it safe, between 11:00 and 1:00.

Q. 11:00 and 1:00. Did they have lunch there?

A. Their table was all set. As I recall it, they hadn't eaten yet.

Q. But Mrs. Turnbeaugh was there?

A. Mrs. Turnbeaugh was.

Q. Was Mr. Turnbeaugh there?

A. No, he wasn't.

Mr. Snyder: That is all.

Recross Examination

By Mr. Brown: Q. And while you were there, the house was running just the same as it always has. You were there many times, weren't you?

A. What do you mean by that?

Q. Well, you have been in that home many times? A. Not too many.

Q. Before that?



(Testimony of Clem V. Mulholland.)

A. No, no, sir, not very many.

Q. Never been there before?

A. I had been there at times. But their table was set.

Q. Yes. A. For lunch.

Q. That's right.

A. Mr. Turnbeaugh wasn't there.

Q. Yes. [117]

A. I believe one of the boys was, and the two little girls were.

Q. They were all home? A. Yes.

Q. Now, you remember that home how you saw it furnished the first time? You remember that, the first time you were there?

A. Well, you are talking about two different homes.

Q. No, the Gagas home.

A. Yes, the Gagas home.

Q. The Turnbeaugh home at the Gagas house?

A. That's right.

Q. Do you remember the first time how the house was furnished? A. Yes.

Q. And the time you are referring to now, it was furnished identically the same way?

A. I was only in the living room.

Q. The living room? A. Yes.

Q. You could see the rest of the house?

A. No, sir.

Q. The living room was furnished just the same as it had been previously?

A. And the dining room was adjoining.



(Testimony of Clem V. Mulholland.)

Q. Furnished just the same as it always was?

A. Yes.

Q. When was that?

A. This Saturday after Thanksgiving.

Q. That is the date you were there?

A. That's right.

(Reporter's Note: At this time the reporter replenished the supply of stenotype paper in his machine, and a discussion was had off the record, after which the following proceedings were had:) [118]

Mr. O'Reilly: They intended to make that their home and were actually residing there, and were intending to make it their home, which the evidence establishes that they did, and that is a homestead and a compliance with the Homestead Law.

Mr. Brown: That is by Judge O'Reilly.

Mr. O'Reilly: I will quote the law on this.

The Referee: So far as the evidence is concerned, you don't need to bring any further witnesses that saw them in there.

Mr. Snyder: And that they slept there.

The Referee: And that they slept there.

Mr. O'Reilly: Then, as I understand it, the court is convinced at this time that Mr. and Mrs. Turnbeaugh actually slept there.

The Referee: I think they slept there on the night of the 14th.

Mr. O'Reilly: The night of the 14th.

The Referee: November 14th.

(Testimony of Clem V. Mulholland.)

Mr. O'Reilly: And continued to sleep there thereafter.

Mr. Snyder: Oh, no.

Mr. Brown: Oh, no.

The Referee: No, I wouldn't say that I am convinced of that, but I believe that they were there on that night.

Mr. O'Reilly: Then I want to further establish the fact that they did continue to live there thereafter.

The Referee: Well, put on your witnesses; let's proceed.

Mr. O'Reilly: Q. Do you know whether or not, as a matter of fact, they did continue to live there?

Mr. Brown: That calls for conclusion of the witness; object to that.

The Referee: Not any more than what she saw.

Mr. O'Reilly: Q. Do you know whether or not they were [119] there?

A. I will just answer it this way: I had occasion to go by there many times and they were there working always during the day, and of course I couldn't swear whether they slept there every night or not.

Q. I see.

A. But I was under the impression they were.

#### Recross Examination

By Mr. Brown: Q. You don't know, do you?

A. I don't know actually they slept in that house every night.

Mr. O'Reilly: All right, that is all.

(Testimony of Clem V. Mulholland.)

The Witness: They were playing house, if they didn't.

Can I go?

Mr. O'Reilly: Yes, you may go.

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LYLE TURNBEAUGH,

called and sworn as a witness on behalf of the Bankrupts, testified as follows:

Mr. O'Reilly: Q. Please state your name.

A. Lyle Turnbeaugh.

Q. You are the son of Mr. and Mrs. Turnbeaugh? A. Yes.

Q. Where were you residing or living on or about the 14th day of November, 1940?

Mr. Snyder: Just a second. That is calling for opinion and conclusion of the witness; that is the issue in this case.

The Referee: Where was he residing? He is not a party to this proceeding.

Mr. O'Reilly: Where was home at that particular time, or where was he living?

The Referee: Well, I think that is permissible.

Mr. Snyder: Where he was living? [120]

Mr. Brown: Where he slept?

Mr. Snyder: Where he slept, ate, changed his clothes.

Mr. O'Reilly: Q. Where was your residence on or about the 14th day of November, 1940?

(Testimony of Lyle Turnbeaugh.)

Mr. Snyder: Object to that calling for conclusion of the witness.

Mr. O'Reilly: He can state what was his residence, if the Court please.

The Referee: It can be developed in cross-examination; we have got to finish this thing up, now.

The Witness: You want me to answer that?

Mr. O'Reilly: Q. You are nervous, aren't you. This is just a court hearing, don't get too nervous; these attorneys here, they won't hurt you, and I am sure I won't.

The Referee: The witness doesn't look nervous to me.

Mr. Snyder: You are not nervous at all, are you, old man?

The Witness: Oh, I hardly think so.

Mr. Snyder: Of course not.

Mr. O'Reilly: Q. Will you please state what I asked you?

A. Well, it was on Murphys Ferry Road at the place owned by Gagas, on that particular day.

Q. Well, to cut this thing short now: Do you know whether or not your mother and father actually slept in the garage on the premises where it is now located on October 14th, 1940, November 14th, 1940? A. Yes, I know that they did.

Q. And in the meantime where did you continue to sleep during the months of November, December and up until January?

A. I slept in this place where I was staying on Murphys Ferry Road. [121]

(Testimony of Lyle Turnbeaugh.)

Mr. Brown: The Gagas house?

A. Yes, that's right.

Mr. O'Reilly: Q. All of the months prior to the completion of the new home?

A. No; prior to the time that we moved into the garage.

Q. Moved into the garage. Now, do you know whether or not—I am going to ask you this question: Is it or is it not a fact that your mother and father continued to reside all the time, and slept as well as reside——

The Referee: Leave out the word “reside”. That is the point that the court is going to try to determine in this case, where they resided.

Mr. O'Reilly: All right, I will stipulate that the word “reside” be omitted.

The Referee: Then it is a matter for the court.

Mr. O'Reilly: Q. (Continuing): In the garage house continuously from November 14th to the time that the house, itself, was completed?

Mr. Brown: Object to that on the ground it calls for the conclusion of the witness, no proper foundation laid.

The Referee: Well, I think the witness may state where his mother and father slept, where they had their meals, where they did thir washing, where they sat in the evenings, and where the children were and anything else that pertains to family life, then it is a matter for the court to determine what the facts are.



(Testimony of Lyle Turnbeaugh.)

Mr. O'Reilly: May he answer, if the Court please, may he answer the question?

The Referee: Certainly.

A. The folks stayed every night from November 14th on at the—out in the garage, or in the garage.

Q. Did you live at any time on the garage premises? [122]

A. Oh, yes, after the garage—after they started the house, why, we moved in there at about the time: I don't remember for sure when it was that we boys moved there.

Q. Well, before the garage was built did you sleep on the premises? A. Yes.

Q. Will you explain to the court under what circumstances?

A. Well, the lumber was delivered for the garage on October 31st, and I directed the fellow there that delivered the lumber, and that night we put up a tent and stayed there, and my brother and I rotated each evening up until the 14th.

Q. And on that date what happened?

A. Well, the folks moved to the garage, the furniture was brought there and they went down and slept there that evening.

Q. Did you supervise the delivery of the furniture?

A. I was there when the furniture was delivered, yes.

Q. By whom was it delivered?

A. It was delivered by two gentlemen from the

(Testimony of Lyle Turnbeaugh.)

Majestic Furniture Store, I believe the name of it was.

Q. Then did you help set up the furniture or not?      A. Yes, I did, I helped.

Mr. O'Reilly: I think that is all.

Cross-Examination

By Mr. Snyder: Q. How old are your sisters?

A. My sisters, let's see: one of them is eight and the other one is ten or eleven, I forget just now.

Q. You wouldn't ever leave them by themselves, some of the family always stayed with them, isn't that right?      A. Oh, yes.

Q. They were over at the Gagas place up until February 9th, I believe your father said, when you moved over to the new house?

A. Well, when we moved to the garage; they weren't there [123] until we all moved to the garage. Now, I don't know just what date we moved to the garage.

Q. Sometime after the first of the year?

A. Well, I wouldn't say to that, because I am not sure as to the date; but one of us always stayed with the girls when we were at Gagas' place.

Q. You don't know when your Dad gave up the Gagas place?      A. I don't recall the date.

Mr. Snyder: I think that is all.

Mr. O'Reilly: That is all.

Now the brother of this gentleman that just left the stand is outside as a witness, and if it can be stipulated that he would testify as this witness tes-

(Testimony of Lyle Turnbeaugh.)

tified there would be no necessity to put him on the stand.

The Referee: Yes, it is all cumulative.

Mr. Brown: I think this is a dangerous matter if Your Honor feels that we should enter into a stipulation of that kind; we don't want to throw the onus back on the court, but we feel this is so vital that there should be a complete showing made, and maybe should have another day.

The Referee: The court has stated that it is satisfied that these people were sleeping there in that garage, but that they maintained their home where the children were, and they ate, and all the family affairs were carried on at the other place.

Mr. Snyder: That's right.

The Referee: Now, it is purely a legal question, I think. I would like to have some authority. The facts seem to be clear enough. I cannot see any purpose for the introduction of more testimony, however, if Mr. O'Reilly wishes to put on any other witnesses on any other point, you might do so.

Mr. Brown: Would the court recess for a few minutes?

Mr. O'Reilly: I haven't taken very much time of this [124] court, as the court well knows. This is very important to the Turnbeaugh's.

The Referee: All these matters are important.

Mr. O'Reilly: Mostly cross-examination here under 2055.

The Referee: I think we will have to have that other matter here at a different time. If you have

(Testimony of Lyle Turnbeaugh.)

any other witnesses on this exemption question, on any point, if you will bring them on now. The court is not going to hear any further examination under 21-A at this time. We will set that for another date.

Mr. O'Reilly: I see.

The Referee: I don't want to confuse the questions.

Mr. Brown: It is up to Mr. O'Reilly to assert his right to this claim.

Mr. O'Reilly: To what claim, to who?

Mr. Snyder: You have to prove the residence; the burden is on you.

Mr. O'Reilly: The question is whether the burden of proof has changed, and it hasn't as yet.

The Referee: Have you any witnesses?

Mr. O'Reilly: On this question of their sleeping there?

The Referee: Yes.

Mr. O'Reilly: Yes.

The Referee: Well, I am satisfied that they were sleeping there.

Mr. O'Reilly: During the whole time?

The Referee: Yes, slept there every night, probably.

Mr. Snyder: At least, on the 14th, which is a material matter.

The Referee: At least on the 14th.

Mr. O'Reilly: Then the court is not convinced they were sleeping there all the time?

(Testimony of Lyle Turnbeaugh.)

The Referee: Well, they say so; they say so.

[125]

Mr. Snyder: But that is not material, John.

The Referee: And it hasn't been refuted that they were sleeping there.

Mr. Brown: The question is whether they can have two homesteads.

The Referee: I think the whole question is purely a question of law as to whether or not there—the mere fact of the father and mother having gone over for the very purpose of claiming a homestead——

Mr. Snyder: Do they have to do more than just sleep there?

The Referee: Yes, that is the point.

Mr. Brown: Does that fall within the purview of good faith?

Mr. O'Reilly: As I understand, they do. Now, at this time, Your Honor, I didn't come prepared with any authorities.

The Referee: Well, I am not asking you to present any.

Mr. O'Reilly: If the court would make a reservation in that matter.

The Referee: Well, it will be submitted and I will ask you to submit some authority.

Mr. O'Reilly: My understanding of the Homestead Law is this: As a general rule it is not as harsh as Mr. Brown would have the court believe; the people who claim the homestead in any way do so in good faith. If they establish their home



(Testimony of Lyle Turnbeaugh.)

there, as these people did, then there is no question about that being their place of residence and abode. Because you cannot tell what is in the mind of a man without him expressing himself where his residence actually is, until he shows where it is, and so far as proof along those lines, that we have done, I think. If the court is desirous of obtaining or hearing any more evidence of it—— [126]

The Referee: No.

Mr. O'Reilly: (Continuing) ——I shall be glad to introduce it.

The Referee: No, they stated they were sleeping in the garage, and they moved some furniture up from Modesto; at the same time they were still maintaining a home at the Gagas place where their children were living, they were doing their washing and they were eating their meals there, excepting their luncheon.

Mr. Brown: If you can have two homesteads, you can have thirty.

The Referee: They were entertaining their relatives.

Mr. Snyder: Guests and relatives there.

The Referee: And so forth. The whole question is as to the law. I would like to have you gentlemen enlighten me as to what the law is. You may have a case right in point.

Mr. O'Reilly: I shall be very glad to do so, but I don't think that that should be required before Christmas. I have a lot of other matters.

(Testimony of Lyle Turnbeaugh.)

The Referee: The court is of the opinion that they went there and probably unquestionably were told by Mr. Galt that they had to be actually residing there.

Mr. O'Reilly: If the court requires Mr. Galt's testimony, I shall bring him up here.

The Referee: No, that is not necessary. Mr. Galt wouldn't know anything about it.

Mr. O'Reilly: If the Court please, I consulted with Mr. Galt before this court session, and he told me he distinctly remembers telling them.

The Referee: That wouldn't vary the terms of the declaration which was made on that day.

Mr. O'Reilly: Now, if the Court please, that is merely——

The Referee: If you have any other point. [127]

Mr. O'Reilly: (Continuing): This is the contract for the purchase of the furniture.

The Referee: There is no question about it in the court's mind, there is no question about that. Now, if you have any other points, other than the matter of their sleeping there and having that furniture there on that night, and having their lunch there while he was building the house.

Mr. O'Reilly: May I ask one question of the witness?

The Referee: Very well.

DEVEINE FLOY TURNBEAUGH,

recalled as a witness on behalf of the Bankrupts,  
testified as follows:

Mr. O'Reilly: Q. Who made the homestead for you? A. Who?

Q. Who wrote it, made it up for you to sign?

A. Well, Mr. Galt's secretary, I suppose.

Q. Well, don't you know, was it being prepared or was it prepared while you were sitting there?

A. It was made while we were sitting there.

Q. Who gave the instructions to the stenographer? A. Mr. Galt.

Q. Mr. Galt.

Mr. Snyder: You are not trying to vary the terms of a written contract, are you, John?

Mr. O'Reilly: No, I want the court to know that this woman didn't have the advice of counsel, and I don't think Mr. Galt is an attorney.

Mr. Brown: Are you relying on the homestead or not relying on the homestead?

Mr. O'Reilly: Now, just a minute, Mr. Brown; I have an idea you will find out, if you will not interrupt me.

Mr. O'Reilly: Q. Mr. Galt at that time was handling an [128] escrow for you, was he not?

A. Yes.

Q. And the deed and all the instruments pertaining to the borrowing of money on this particular property were all in escrow at the time?

A. You mean pertaining to the property?

Q. Yes. A. Yes.

(Testimony of Deveine Floy Turnbeaugh.)

The Referee: The deed was on record or not on record?

Mr. O'Reilly: No. The deed was recorded, if the Court please, the same time as the homestead.

Mr. Snyder: In other words, no creditor got a chance to know what was going on.

Mr. O'Reilly: I don't know a thing about that.

Mr. Snyder: It was recorded on the 20th of November.

The Referee: The 20th.

Mr. Snyder: Three or four days after the execution.

The Referee: After the homestead. Oh, I see, a homestead was recorded first.

Mr. O'Reilly: Q. Now, you told Mr. Galt the facts pertaining to what you intended to do and all that, did you? A. Yes.

The Referee: Very well.

Mr. O'Reilly: Q. I did not represent you at that time? A. You what?

Q. You didn't know me at that time?

A. No.

Q. I didn't represent you? A. No.

The Referee: Any further point?

Mr. O'Reilly: That is all, I believe.

The Referee: Well then, the matter will be submitted, [129] I take it, on points and authorities, and you will present your authority.

Mr. O'Reilly: On the first issue.

The Referee: It is not necessary to discuss the facts.

(Testimony of Deveine Floy Turnbeaugh.)

Mr. O'Reilly: The court assumes, then, the burden of proof has changed?

Mr. Brown: The burden hasn't changed; you are relying on the homestead.

The Referee: I don't expect you to present all those facts, but I would like to have you give me the law. That is what is going to determine this case.

[Endorsed]: Filed April 10, 1944. [130]

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[Title of Court and Causes.]

#### APPELLANTS' DESIGNATION OF RECORD

To the Clerk of the United States District Court for  
the Northern District of California, Northern  
Division:

You are hereby requested to make a record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to appeal taken in the above entitled proceedings, and to include in such record the following portion of the records and proceedings taken herein, to wit:

1. Order adjudging Orvey Ray Turnbeaugh, a bankrupt. [131]
2. Order adjudging Deveine Floy Turnbeaugh, a bankrupt.
3. Trustee's report setting aside exemption of bankrupts (omitting title of court and cause).
4. Exception of Mary Santos to trustee's report



of exemption (omitting title of court and cause and verification).

5. Opinion of Referee upon question of exception to trustee's report of exempt property (omitting title of court and cause).

6. Order of Referee dated April 21, 1943, denying the bankrupts' claim of exemption (omitting title of court and cause).

7. Petition for Review of Order of Referee dated April 21, 1943, (omitting title of court and cause and verification and excluding copy of Order of Referee and Opinion of Referee annexed thereto, it being ordered printed under designation Nos. 5 and 6).

8. Referee's certificate upon petition for review (omitting title of court and cause).

Q. Trustee's Exhibit 1. Declaration of Homestead filed by the bankrupts.

10. Minute order of Judge of the U. S. District Court approving Referee's Certificate and affirming Order of Referee (omitting title of court and cause).

11. Notice of Appeal (omitting title of court and cause).

12. Undertaking for costs on appeal (omitting title of court and cause).

13. Appellants' summary of testimony and excerpts from transcript of testimony (omitting title of court and cause).

14. Appellants' designation of records (omitting title of court and cause).

15. Notice of filing of appellants' designation of record, appellants' summary of testimony and appellants' excerpt from transcript of testimony (omitting title of court and cause).

16. Statement of points to be relied upon by appellants and notice of filing of same (omitting title of court and cause).

17. Affidavit of service of appellants' designation of record, notice of filing thereof, Appellants' summary and excerpts from transcript of testimony filed, and statement of points [132] to be relied upon by appellants (omitting title, court and cause).

Dated this 8th day of April, 1944.

ERNEST J. TORREGANO

Attorney for Appellants.

[Endorsed]: Filed April 10, 1944. [133]

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[Title of Court and Causes.]

NOTICE OF FILING OF DESIGNATION  
OF RECORD

To Mary A. Santos and Gumpert & Mazzer, Her  
Attorneys:

You and each of you please take notice and you are hereby notified that appellants have filed with the Clerk of the United States District Court at Sacramento, California, the designation of record required by appellants to be certified to the United States Circuit Court of Appeals pursuant to the

appeal filed by appellants, a copy of said designation of record being served upon you together with a copy of the appellants' summary of testimony and excerpts from transcript of testimony and a [134] copy of statement of points to be relied upon by appellants.

Dated this 8th day of April, 1944.

ERNEST J. TORREGANO

Attorney for Appellants.

[Endorsed]: Filed April 10, 1944. [135]

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[Title of Court and Causes.]

STATEMENT OF POINTS TO BE RELIED  
UPON BY APPELLANTS UNDER RULE 75

That the Order of the District Judge appealed from confirming the Referee's certificate and denying the bankrupt's claim of exemption is:

1. Contrary to law.
2. Not sustainable under the facts presented.
3. That the undisputed evidence affirmatively proved that the bankrupts resided upon the premises claimed as exempt, as required under the laws of exemption of the State of California. [136]
4. That the denial of the bankrupts' claim to a homestead exemption under the facts presented by the record were and are contrary to law and equity.

Dated this 8th day of April, 1944.

ERNEST J. TORREGANO

Attorney for Appellant.

[Endorsed]: Filed April 10, 1944. [137]

[Title of Court and Causes.]

AFFIDAVIT OF MAILING

Margaret McShane, being first duly sworn, deposes and says: that she is a citizen of the United States over the age of eighteen (18) years and not a party to the above entitled proceedings.

That affiant on the 8th day of April, 1944, at the City and County of San Francisco, State of California, deposited in the United States Post Office at San Francisco, California, a sealed envelope addressed to Messrs. Gumpert & Mazzer, 916 Bank of America Building, Stockton, California, attorneys for Mary A. Santos, [138] the objecting creditor to the trustee's report of exemption in the above entitled proceedings, the following records filed in the above entitled proceedings, to wit:

1. Appellants' designation of record.
2. Notice of Filing Appellants' Designation of Record.
3. Appellants' Summary and excerpts from transcript of testimony files.
4. Appellants' statement of points to be relied upon by appellants.

Further affiant saith not.

MARGARET McSHANE

Subscribed and sworn to before me this 8th day of April, 1944.

[Seal] ALFRED D. MARTIN

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 10, 1944. [139]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 139 pages, numbered from 1 to 139, inclusive, contain a full, true and correct transcript of certain records and proceedings in the matters of Orvey Ray Turnbeaugh, No. 10150 and Deveine Floy Turnbeaugh, No. 10151, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation of Record, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing record on appeal is the sum of Twenty-two and 85/100 (\$22.85) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and the official seal of said District Court, this 22nd day of April, A. D. 1944.

[Seal]

C. W. CALBREATH, Clerk

By F. M. LAMPERT,

Deputy Clerk. [140]



[Endorsed]: No. 10747. United States Circuit Court of Appeals for the Ninth Circuit. Orvey Ray Turnbeaugh and Deveine Floy Turnbeaugh, Appellants, vs. Mary A. Santos, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed April 24, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10747

ORVEY RAY TURNBEAUGH and DEVEINE  
FLOY TURNBEAUGH,

Appellants,

vs.

MARY A. SANTOS,

Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANTS INTEND TO RELY AND  
DESIGNATION OF RECORD FOR CON-  
SIDERATION ON APPEAL

Orvey Ray Turnbeaugh and Deveine Floy Turnbeaugh, as appellants herein, incorporate by refer-

ence their Statement of Points on which Appellants Intend to Rely which was filed in the District Court of the United States, Northern District of California, Northern Division, and which is part of the record on appeal of said Court in said proceeding.

That said appellants further hereby designate as their Record on Appeal in said proceeding which they think is necessary for the consideration thereof.

1. The record as heretofore designated by appellants in the District Court of the United States for the Northern District of California, Northern Division, and certified by the Clerk and on file with the above entitled Court.

2. Clerk's certification of said record.

Dated: This 1st day of May, 1944.

ERNEST J. TORREGANO

Attorney for Appellants.

Copy mailed to Messrs. Gumpert & Mazzera, Attorneys at Law, Stockton California. Attorneys for Appellee. May 1, 1944.

[Endorsed]: Filed May 2, 1944. Paul P. O'Brien, Clerk.